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Government of India

A critical exposition of the Government of India
Act, 1935.

By

M. P. Sharma, M. A.

Professor of Political Science, S. D. College, Cawnpore.

S. N. Varma, M. A.

Professor of Political Science & Civics, D. A. V. College,
Cawnpore.

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PREFACE

This book has grown out of the class lectures of the authors and it is primarily intended to meet the requirements of the degree and post graduate students. An attempt has been made to include in this book all that a university student should know about the new Indian constitution without overburdening him with too minute details. Critical evaluation of the various constitutional arrangements under the new order of things and where possible an account of the working of the new institution have been included and to save the reader the trouble of hunting up the various documents referred to in the body of the work copious appendices containing the legislative lists Instruments of instructions to Governors and Governor General the franchise rules etc. have been added. It is hoped, therefore that the book will be of interest to the general reader as well.

To write objectively on the Indian constitution while it is yet a subject of keen political controversy is no arduous task. Though the authors have tried their best to give a balanced opinion on debated issues it is for the readers to judge how far they have succeeded in their aim.

THE AUTHORS

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CHAPTER I

HISTORICAL INTRODUCTION

I

Political history of India has been more or less continuous since the coming of the British in India. Though, in the initial stages of the East India Company, this continuity may not be observable, one can see a continuous advance towards responsible government with the assumption of the territories in India by the British Crown. Anyone, who studies India's political history with an unbiased mind, would remember with gratitude the honoured names of Bright, Ripon, Morley and Montague. At three critical periods of India's history, these Liberal Statesmen saved her for England and the Empire.

The Indian Mutiny and the transfer of the Government of India to the Crown

To the genius and vision of John Bright, India owes its Magna Charta, the Queen's proclamation of 1858. The Indian Mutiny of 1857 had been put down with all the ruthlessness. It was, however, felt by the statesmen of England that the old order must change. The rule of the East India Company was abolished; the Crown took possession of the Company's territories. But the Government of India needed remodelling, and

so came the India Bill of 1858 sponsored by Disraeli's Government. When it came for the second reading, John Bright delivered his celebrated speech* in which he pleaded for "a little more daylight, more simplicity, more responsibility." The population of India was greatly impoverished, he said taxes were unbearable, police arrangements were inadequate, judicial administration was unsatisfactory, the finances in the country were in a bad state. Political discontent had to be removed. A mutiny was no doubt quelled, but the people had to be appeased.

John Bright

Hence Bright suggested the idea of a Royal Proclamation to conciliate the Indian people, to give them satisfaction for the present and hope for the future. It certainly required courage to talk of conciliation at the time when the English in India were crying out for retribution and revenge. "If I had the responsibility of administering the affairs of India," he said, "I would immediately after this Bill passes, issue a Proclamation in India which should reach every subject of the British Crown in that country and be heard of in the territories of every Indian Prince or Raja."

The Queen's Proclamation

And so came the Queen's proclamation. It said:

"We desire no extension of Our Present territorial possession, and while We will permit no aggression upon Our Dominions or Our Rights to be attempted with impunity, We shall sanction no encroachment on

*In the House of Commons, June 24, 1858

those of others. We shall respect the Rights, Dignity, and *Honour of Native Princes* as *Our own*; and We desire that they, as well as *Our own Subjects*, should enjoy that Prosperity and that social Advancement which can only be secured by internal Peace and good Government And it is *Our further will* that, so far as may be, *Our Subjects, of whatever Race or Creed*, be freely and impartially admitted to Offices in *Our Service*, the Duties of which they may be qualified, by their education, ability, and integrity, duly to discharge."

The Royal proclamation came as a boon to the people of the Country. It was welcomed by the educated and the politically-minded classes as "a Great Charter." And thus the object of Bright, viz., to close an unfortunate chapter and open a new one, was soon accomplished. All the ruthless severity with which retaliation was attempted on the Indian people, was for the time forgotten and an atmosphere of peace and good-will soon spread throughout the Country. The Indian Council Act of 1851 associated for the first time a few non official Indians with the task of legislation for the Country.

Lord Ripon

While the guiding spirit of the Queen's proclamation was a great Liberal thinker, it was translated into action by another great Liberal statesman, Mr. Gladstone. Lord Ripon in whom Mr. Gladstone had confidence was chosen to succeed Lord Lytton as the Viceroy of India, and it was with Gladstone's support that he strove to introduce the far-reaching administrative and judicial reforms. Lord Ripon's scheme of local self-government was hailed by the Indian

people as giving them an opportunity for self help and self development though it was largely opposed by European official and non official alike Anglo Indian revolt triumphed The Viceroy was disgraced and defeated The Bill was only placed on the Statute Book ' says Lord Curzon in a greatly modified form The Indians felt that Lord Ripon had to surrender and that it was their own fault They had no training, no organisation or an ineffective organisation It was high time for Indians to have a national organisation of their own as Her Majesty's unofficial and unrecognised opposition to support and oppose the Government whenever necessary

Lord Dufferin Birth of the Indian National Congress

Lord Dufferin was a great diplomat whose administration was marked by a startling event, the founding of the Indian National Congress It is amazing and incredible to learn that the father of the Congress was the then Viceroy himself Sir William Wedderburn tells the interesting story

In initiating the National movement Mr Hume took counsel with the Viceroy Lord Dufferin and whereas he was himself disposed to begin this propaganda on the social side it was apparently by Lord Dufferin's advice that he took up the work of political organisation as the first matter to be dealt with Lord Dufferin seems to have told him that as the head of the Government he had found the greatest difficulty in ascertaining the real wishes of the people and that for purposes of administration it would be a public benefit if there existed some responsible organisation through which the Government could be kept informed regarding the best Indian public opinion He further

observed that owing to the wide differences in caste, race and religion social reform in India required local treatment rather than the guidance of a national organisation. These kindly counsels were received with grateful appreciation by all concerned. Indeed so cordial were the relations that Lord Dufferin was approached with a view to the first Congress being under the presidency of Lord Reay, then Governor of Bombay. Lord Dufferin welcomed the proposal as showing the desire of the Congress to work in complete harmony with the Government but he considered that many difficulties would be involved if a high official presided over such an assembly. The idea was, therefore, abandoned but none the less the first Congress was opened with the *friendly sympathy of the highest authorities*.

The Ilbert Bill Controversy

The failure of the Ilbert Bill had left a legacy for the Congress whose formula for the future could be summed up in two words, 'agitation' and 'boycott'. Lord Dufferin himself felt constrained to repudiate his own offspring. He attacked the Congress as "a big jump into the unknown". If a handful of Anglo Indians could bring the Government down on its knees on a question of vast moral consequence, on the merits of which both Calcutta and Whitehall had fully agreed, it was time, felt the Congressmen, to carry the message of boycott to the masses. The demands of the Congress for greater association of Indians with government led to the passage of Indian Councils Act 1892 which increased the number of additional non official members of the Indian legislative council and permitted them to put questions and discuss the annual financial estimates.

This act however, did not meet the full demand of Indians who were only waiting for an opportunity to push forward their national agitation with greater vigour. The opportunity was afforded by the unpopular regime of Lord Curzon, and particularly his tactless measure of the Partition of Bengal."

Lord Minto

British rule was face to face with a full blooded revolution during the viceroyalty of Lord Minto, who succeeded Lord Curzon. The movement was spreading the spirit of destruction and hatred of the British far and wide. Lord Morley, the Secretary of State, was asked by the Government of India to sanction drastic measures of repression. "I trust and fully believe," wrote Lord Morley to Lord Minto, the Viceroy, 'that you will not judge me to be callous, sitting comfortably in an armchair at Whitehall, while bombs are scattering violent death in India." Both the Secretary of State and Governor, however, agreed that the situation demanded not only repression but also reform.

Lord Morley had to fight against heavy odds. "That unsympathetic tribe, the Anglo Indian of Calcutta", as he called them, were against the reforms, though his proposals were essentially of an evolutionary character, keeping the power of the Executive unimpaired.

The moderate liberalism of Lord Morley was not liked by the European members of the Indian Civil Service. In the Viceroy's own Cabinet there was division. Lord Minto himself had doubts and misgivings.

Morley-Minto Reforms

So came the Minto-Morley reforms, preceded by another Royal Proclamation indicative of good will.

King's Proclamation

"It is now fifty years since Queen Victoria, my beloved mother, and my August Predecessor on the throne of these realms, for diverse weighty reasons, with the advice and consent of Parliament, took upon herself the government of the territories theretofore administered by the East India Company. I deem this a fitting anniversary on which to greet the Princes and Peoples of India, in commemoration of the exalted task then solemnly undertaken. Half a century is but a brief span in your long annals, yet this half century that ends to day will stand amid the floods of your historic ages, a far shining landmark. The proclamation of the direct supremacy of the Crown sealed the unity of Indian Government and opened a new era Steps are being continuously taken towards obliterating distinctions of race as the test for access to posts of public authority and power. In this path I confidently expect and intend the progress henceforward to be steadfast and sure, as education spreads, experience ripens, and the lessons of responsibility are well learned by the keen intelligence and apt capabilities of India. From the first the principle of representative institutions began to be gradually introduced, and the time has come when, in the judgment of my Viceroy and Governor-General and others of my counsellors, that principle may be prudently extended. Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship, and a greater share in legislation and government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and

power Administration will be all the more efficient, if the officers who conduct it have greater opportunities of regular contact with those whom it affects, and with those who influence and reflect common opinion about it '.

II

The Minto Morley Reforms however, did not satisfy India's hunger for responsible government. The Reforms gave to the peoples' representatives the power to speak, but transferred not one iota of responsibility, which remained in the hands of permanent officers of the Indian bureaucracy. Lord Morley's disclaimer is too well known to every Indian. "If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I for one, would have nothing at all to do with it"*

M. C. Report on (Morley-Minto) 1909 changes

Nevertheless a change was noticed which has been described by the Authors of the Montague-Chelmsford report

"The voice of criticism was never silent but its tone showed a gradual change with the passing years, the purely negative attitude of opposition gradually passed into a more constructive policy. Criticism came to be combined with the advocacy of progress and with demands that became steadily more insistent for a form of government which would leave Indians free to rule India in a manner consistent with Indian ideas. The spirit of liberty was abroad and active. We can

*House of Lords Debates, Dec 17, 1908

The warning was fulfilled Mrs Beasant was interned. That enraged the country all the more. Angry meetings were held all over the country. India, it seemed, was on the verge of a revolution. Even loyal moderates like Pt. Motilal Nehru who had so far kept out of the movement joined Mrs Beasant's Home Rule League and carried on a vigorous agitation. The Government in England began to realise how repression made the meat it fed on. They could no longer keep their head buried like the ostrich into the sand until the danger passed off.

The Announcement of 1917

On 29th August, 1917 came the following announcement by the Secretary of State for India in the House of Commons

' The policy of His Majesty's Government with which the Government of India is in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided with His Majesty's approval that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India to consider with Viceroy the views of Local Governments, and to receive with him the suggestions of representative bodies and others '.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India on whom the responsibility lies for the welfare and advancement of the Indian people, must be judges of the time and measure of each advance and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Mr Montague's visit to India

Mr Montague arrived in India amid the applause of the Indians and the curses of the Anglo Indians, officials not excluded. The European Association, the European newspapers and their Tory and Unionist Allies in England, chanted a universal hymn of hate against "the wandering Jew", as one of them called him. The Anglo-Indian revolt reminded Indians of the Ilbert Bill crisis. Well might Mr. Montague have felt like Lord Ripon, who wrote to Kimberley

"Englishmen in India had learnt nothing and forgotten nothing since the days they threatened to drown Macaulay in the Hugh, or since they threatened to deport the Viceroy."

What followed next is too familiar a tale to be told in these pages. The Secretary of State and the Viceroy in a joint venture produced the document, commonly known as the Montague Chelmsford Report on the basis of the announcement made by the former in the British House of Commons in August, 1917.

M C Report

The Report, before attempting to work out any

detailed plans, laid down, in the shape of formulæ, four governing principles which were to be embodied in the new constitutional structure. These four formulæ were as follows :

Four Formulæ

- (1) "There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control.
- (2) "The Provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial of the Government of India which is compatible with the due discharge by the latter of its own responsibility.
- (3) "The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes now to be introduced in the Provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative, and its opportunities of influencing government increased.
- (4) "In proportion as the foregoing changes take effect, the control of Parliament and the Secretary

of State over the Government of India and Provincial Governments must be relaxed ”

The intentions of the authors were not in all details carried out by Parliament or under its authority, but these formulæ were the framework to which the Constitution of 1919 owed its shape

Cardinal Principles

The cardinal principles of the Reforms of 1919 were, first, the recognition of all legislative bodies as distinct from the executive, and second, the devolution of authority to provincial governments. The dominant conception of the constitution, which then came under revision, was that the entire governmental system is one indivisible whole and amenable to the control of Parliament. The rigour of a logical application of that conception to administrative practice had gradually been mitigated by wide delegation of powers and by customary abstentions from interference with the agents of administration. But the principle of the conception was still living and operative, and it blocked effectively any substantial advance towards the development of self-governing institutions. In the first place, the legislative councils were, in theory, only an enlargement of the executive government for the purposes of law-making. The members of the legislative councils, other than members of the executive government whether nominated or elected, were styled additional members. Legislative power was not recognised as residing in a legislature as distinct from the Government. Again, the provincial governments in whose hands lay the day to day task of administration in the

provinces possessed no powers derived from a position of independence. By law all the powers exercised by the East India Company, the Court of Directors and the Board of Proprietors were vested in the Secretary of State who also possessed all embracing powers of superintendence, direction and control over the Government of India. The government of the country was one and local Governments were virtually in the position of agents of the Government of India to which the whole civil and military administration of the country was committed by the Act of 1833.

It were these features of the Constitution which drove the authors of the Montague Report to the conclusion that no further progress on the old lines of delegation and of abstention was possible. They were charged by the announcement of 1917 with the duty of devising substantial steps in the direction of the gradual development of self governing institutions and they found their path blocked by the barriers of the existing constitution which gradual decentralization had only partially lowered.

Kings Proclamation

So came the 1919 Reforms. On the passing of the Government of India Act 1919 the following Proclamation was made by King George V.

'Another epoch has been reached to-day in the annals of India. I have given my Royal Assent to an Act which will take its place among the great historic measures passed by the Parliament of this Realm for the better government of India and for the greater contentment of her people. The Acts of 1773 and 1784 were designed to establish a regular system of

administration and justice under the Honourable East India Company. The Act of 1833 opened the door for Indians to public office and employment. The Act of 1858 transferred the administration from the Company to the Crown and laid the foundations of public life which exist in India to day. The Act of 1861 sowed the seed of representative institutions, and the seed was quickened into life by the Act of 1909. The Act which has now become law entrusts the elected representatives of the people with a definite share in the Government and points the way to full responsible government there after. If, as I confidently hope, the policy which this Act inaugurates should achieve its purpose, the results will be momentous in the story of human progress, and it is timely and fitting that I should invite you to try to consider the past and to join me in my hopes of the future.

'I have watched with understanding and sympathy, the growing desire of my Indian people for representative institutions. Starting from small beginnings this ambition has steadily strengthened its hold upon the intelligence of the country. It has pursued its course along constitutional channels with sincerity and courage. It has survived the discredit which at times and in places lawless men sought to cast upon it by acts of violence committed under the guise of patriotism. It has been stirred to more vigorous life by the ideals for which the British Commonwealth fought in the Great War and it claims support in the part which India has taken in our common struggles, anxiety and victories. In truth, the desire after political responsibility has its source at the roots of the British connection with India. It has sprung inevitably from the deeper and wider studies of human thought and history which that connection has opened to the Indian people. Without it the work of the British in India would have been incomplete. It was, therefore, with a wise

judgment that the beginnings of representative institutions were laid many years ago. Their scope has been extended stage by stage until there now lies before us a definite step on the road to responsible Government.

Rowlatt Bill Reception of the Act

But stars of ill omen presided over the nativity of the Act and their malign influences seemed to have affected the Reforms throughout. The Defence of India Act, a War time measure, expired in 1917 and the Government of India decided to continue it to deal with the revolutionary spirit that existed in some provinces particularly Bengal and also with the situation that might develop in consequence of anti British propaganda in certain foreign countries. The Rowlatt Committee was accordingly appointed and its report was published in October 1918. Following upon its recommendations came the Rowlatt Bill which soon mounted the Statute Book inspite of a storm of protest from Indians.

The Change in the Congress Creed

By this time the Indian National Congress which had begun its career with thoroughly liberal ideals had passed on completely to the Nationalist group of Indian politicians led by Bal Gangadhar Tilak who was in those days regarded well as an extremist. The Congress of 1904, writes Mr Ratcliffe, 'was the culminating point of the movement as directed by the founders and by those younger leaders who shared their political faith and were content with their methods'. Though the left wing headed by Tilak remained outside the Congress until 1916 they were daily gaining strength

and support in the Congress. At the 1916 Congress held at Lucknow, the Left Wing predominated and its project was accepted. The cleavage between the two parties was completed by the publication of the M. C. Report in 1918 and the leadership of the Congress passed on to Mahatma Gandhi, who had now returned to India from his successful campaign of Satyagraha in South Africa. Before this, however, Mahatma Gandhi had appealed to the Viceroy to veto the Bill. He held that the Bill, which sanctioned extra-legal methods, might be employed against legitimate political agitation; that distrust of the police has been a marked feature of almost all popular movements in India, and, through the newly-acquired powers, police methods might be ruthlessly employed against the people; and lastly, that repressive measures should not precede the proposed constitutional benedictions upon India.

Jallianwala Bagh Tragedy

And so came the incident within the boundary of the Jallianwala Bagh at Amritsar on April 13, 1919. It is not necessary to recount the story of excessive punishments of humiliation inflicted on the citizens after the tragedy. The action of General O'Dyer has been universally condemned. "It was a black day in the annals of British rule", wrote the late Sir Valentine Chirol. "That is an episode", observed Mr. Winston Churchill in the House of Commons, "which appears to me to be without precedent or parallel in the modern history of the British Empire." A Committee of Enquiry presided by Lord Hunter came to the conclusion that "the action taken by him (General Dyer) had

been in complete violation of the principles that should rule the employment of force in support of civil authority." But the bitterness left by the incident poisoned the soul of India and it became difficult even for Britain's friends in India to retain confidence in the Government. When, about two years later, His Royal Highness, the Duke of Cannought, came to India to inaugurate the new Indian Legislatures, he realised this, and spoke of "the shadow of Amritsar lengthening darkly over the land."

The Khilafat Movement

The second star of ill that cast an evil eye upon the inauguration of Reforms was the Treaty of Sevres, the terms of which were published in the summer of 1920. The Mohammadans in India felt that "the lighthouse of Islam" was attacked by the British and that "their loyal support to the cause of the Allies during the War counted for nothing in the day of victory." The revolt was organised under the designation of the Khilafat Movement, which joined hands with the Congress agitation in order to embarrass the Government.

The net result of these incidents — the Amritsar tragedy and the Treaty of Sevres — was the widening of the gulf between the British and the Indian intelligentsia. Thus, the goodwill which alone should have animated the inauguration of Reforms was wholly absent, and the agitation continued to aggravate the situation, in the midst of which the new Indian Legislatures were inaugurated.

Details of Constitutional Changes Dyarchy in the Provinces

The Act fully retained the authority of the Imperial Government but attempted to introduce certain changes in the Government of India. Nothing like a Federation was contemplated. In working out devices for reconciling diverse elements that exist within the framework of a unitary constitution the Act established a form of government in the Provinces known as Dyarchy. The term was unfamiliar to most Indians and was deemed as a hurbly hurbly innovation and became an appropriate subject for humorous treatment. Sir Hartcourt Butler writes in *Insistent India*

'In India it has almost become a term of abuse. I have heard one man shouting to another 'you are a dyarchy. I will beat you with a dyarchy' said one Indian boy to another, and when questioned as to what a dyarchy was replied 'a new kind of tennis racket'. I have been received in a Burma village by a dyarchy band braying against a home-rule band with all the vigour of village faction neither having the least idea what home rule or dyarchy meant.

It will serve no useful purpose to dilate upon the merits or demerits of the scheme introduced by the Act of 1919. Volumes have been written upon the political device called Dyarchy that was introduced in the provinces in India in 1919.

India's Reaction to the Reforms Moderate View: Sir S. Bannerji

The publication of the M. C. Report in July 1918 resulted in a complete schism between the two sections of the Congress. The Moderates threw themselves on the

side of the reforms and decided to lend their support for the success of the measure of responsible government embodied in them. The leader of this group, Sir Surendra Nath Bannerji in a speech in the Imperial Legislative Council, commented upon the Report in the following terms

‘ Taking this Report as a whole I think it must be conceded that it affords a striking illustration of a change in the angle of vision on the part of our rulers, and I venture to assert that it ought to be accompanied by a similar transformation in our attitude in regard to the Government of the country. They have now stretched out to us the hand of fellowship and friendship, and I invite my countrymen to grasp it with alacrity and enthusiasm, and in co-operation with British statesmanship to march forward to the accomplishment of those high destinies which under the providence of God, are reserved for our people.’

Neither the Amritsar tragedy nor the Khilafat movement deflected the Moderates from their determination to pursue the course of co-operation, and, therefore, they parted company with the Congress.

The Congress on the other hand under the influence of extreme nationalism, regarded the proposals as falling far short of Indian aspirations. In a manifesto issued by the Nationalists it was asserted that the Report was radically wrong in principle and they condemned it in toto.

Congress view : Lokmanya Tilak

Tilak declared that the proposed scheme was “entirely unacceptable”, and the leader of the Home Rule agitation Mrs Beasant rejected it as being

"unworthy to be offered by England or to be accepted by India." A year later opposition to it became violent, as we have seen, not because of inadequate reforms but of the passing of the Rowlatt Act and the incidents that followed. Subsequently the Congress, under the leadership of Mahatma Gandhi, accepted his programme of non co operation at its session in 1919, held at Amritsar. While the great majority were in favour of refusing any gift "from blood stained hands", a section of the Congress, was in favour of standing as candidates for the Reformed Councils. For three years following this session of the Congress, Mahatma Gandhi's creed reigned supreme in the National Congress, till in 1923 circumstances obliged the Nationalists to change the battle-front.

Moslem attitude to the Reforms

The Moslem leaders were on the whole satisfied with the Reforms, especially in regard to the retention of communal electorates, but at the time of the inauguration of the new Constitution they were rather preoccupied with the future of Turkey. They persuaded themselves to believe that the interference with the Sultanate, as designed in the Treaty of Sevres, would mean giving offence to the religious law of Islam. And we have seen that Gandhiji entered into alliance with the Khilafat movement in order to find a common cause of grievance against the Imperial Government. Though the alliance was short lived, and served no useful purpose, it induced the Government of India to protest against certain provisions imposed upon Turkey by the Treaty of Sevres. The Moslem agitation in India, however, received

a set back when Turkey deposed the Khalf.

Attitude of European Traders

The British commercial community in India now foresaw the necessity of taking an active interest in public questions and reorganise the European Association* on an all India basis. Its attitude towards the Reforms was not hostile and its representatives in the Councils and the Assembly lent support to the new Constitution when it was threatened with deadlock by the intransigent Nationalists.

Official View of Reforms

The officials, with their strong conservative tendencies accepted the new Constitution with some misgivings in regard to its smooth working but they were prepared to give it a trial. Sir Fredrick Whyte, who was appointed as the first President of the Legislative Assembly, observed that a proportion of the officials accepted the Reforms, as the Duke of Wellington looked upon the Reform Bill—"ready to take the damned thing, and let it pass, because the King's Government must be carried on." It was, indeed, clear to them that the strong Central Government and the reservation of 'key' portfolios to the Executive Councils of the Provincial Governments would provide sufficient safeguard against the vagaries and vicissitudes of Indian Politics.

III

The Indian Statutory Commission

From the preamble of the Government of India Act, 1919, it is evident that the 'dyarchical form of

*This Association is the political organisation of the British non official community in India.

government introduced by that Act was to be for a transitional period and that it was regarded more as an experiment than as a beginning of a well-defined Constitution. It was provided in the Act* that a Statutory Commission should be appointed within ten years' time,

"for the purpose of enquiring into the working of the system of Government, the growth of education, and the development of representative institutions in British India, and of reporting as to whether, and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict, the degree of responsible Government then existing therein.... .."

In conformity with Section 84 A of the Government of India Act, 1919, and by an Amending Act, Mr. Baldwin, then Prime Minister announced the appointment of the Commission (Nov , 1927). It was to consist of seven members of Parliament (five Commoners and two Peers) and Sir John Simon was appointed Chairman. The other commissioners were:

Viscount Burnham,
 Baron Strathcona and Mount Royal,
 The Hon'ble E. C. G. Cadogan, M. P.,
 The Rt , Hon'ble Vernon Hartshorn, M. P.,
 Major C. R. Atlee, M P ,
 The Rt. Hon'ble G. R. Lane Fox, M. P.

The Commission thus represented both the Houses of Parliament and all three political parties of Great Britain

*Sec. 84 A of the Government of India Act, 1919,

Reaction to the Commission's Personnel

The Appointment of an all-white Commission raised a volume of protest from the Nationalists in which several of the Indian Liberals joined. The anger of the Moderates was particularly great, for they most certainly hoped that they would have been given in the terms of the Montague announcement fresh opportunities to co-operate with the British Commission. Their anger on their exclusion from the Commission was so great that they denounced it in language the severity of which revealed the intensity of their disappointment.

Sir Tej's View. (bend)

Sir Tej Bahadur Sapru fired the first shot after the Viceroy's announcement. This was surprising. That a gentleman of Dr. Sapru's responsibility, who was a member of the Viceroy's Cabinet, should be preaching boycott like a mad undergraduate was "curious", as a good American lady, wife of a high English official, remarked. Let us try to understand what made this innocent man of the non co-operation era leave the Garden of Eden. Sir Tej said :

"Whosoever else amongst my countrymen may be surprised at the decision of His Majesty's Government I am not, for my recent visit to England has forced on my mind that nothing substantial can be expected from the India Office as it is constituted. English opinion in England has hardened itself against us, and only those Indians can realise it who have recently been there or have talked to English politicians or have been in touch with many other Indians who have recently been to England. I have no

confidence in Lord Birkenhead or the India Office, and I think it is a misfortune that the Commission should come to be appointed by the present Government. I am under no delusion as to the attitude of Labour or Liberals either, but I venture to think that the Labour Government would not have defied Indian opinion and treated it with the contempt with which Mr. Baldwin's Government and Lord Birkenhead have treated it."

If Whitehall had exercised a similar charity of judgment they would have approached the Indian question differently, instead of finding brilliant arguments for the exclusion of Indians, they would have "rallied the Moderates" in Lord Morley's phrase. Be that as it may, with the blessings of the Mother of Parliaments, the Royal Commission started on their arduous journey "with a heart for any fate."

Opposition to the Commission

The immediate effect in India was the organisation of a boycott of the Commission. From the day of their landing to the day of their departure they were hailed in every part of the country with the cries of "Simon ! Go Back !" There were declarations of hartals and a number of disturbances took place as the result of collisions with the police. At Lahore, a prominent Politician, Lala Lajpat Rai was injured and died some weeks later. Although the movement for boycotting the Commission lacked solidarity and its organisers knew perfectly well that they could not in any way obstruct the work of the Commission the occasion was fully exploited to persuade the people to believe that their leaders were engaged in a great

struggle with the 'satanic Government' which must either be mended or ended

To allay this opposition from every quarter the Viceroy invited the Indian Legislatures Central and Provincial to appoint representative committees to co operate with the Commission But the main body of Indian public opinion represented by the Congress and a number of All India leaders representing the Liberals and the Moslems continued to demand that the 'All British Commission' had no right to determine the future Constitution of India To them it was a 'national insult' and some of them proposed the setting up of a Round Table Conference in place of the Statutory Commission

Lord Irwin's conciliatory policy

The organised boycott of the Statutory Commission by the Congress the predominant political party in India with which some of the notable All India leaders joined, made Lord Irwin uneasy about the success of the Commission Mahatma Gandhi's re entry into politics, the publication of the Nehru Report, the acceptance of the Dominion Status goal for India and finally the threat of reviving the non co-operation campaign if the goal of Dominion Status and a Constitution based on it was not affirmed by the end of 1929 led Lord Irwin to realise that the psychological background of the revolt was the want of confidence in the sincerity of the British pledges to India During these 'years of destiny' as Prof Coatsman has termed Lord Irwin's Viceroyalty, every effort was made by the Viceroy to win the confidence of the Indian Nationalists

India and the Labour Government

With the advent of the Labour Government in June 1929, though a minority government, hopes were entertained by a section of the Indian politicians that something might be done. They were based on Mr. Ramsay Macdonald's political utterances in past years. We need quote one which was most recent, which he uttered at the British Commonwealth Labour Conference (July 2, 1926). He said

'I hope that within a period of months rather than years there will be a new Dominion added to the Commonwealth of our Nations a Dominion of another race, a Dominion that will find self-respect as an equal with this Commonwealth. I refer to India.'

There were others who saw no difference whatsoever in the attitude of a Labour Government and a Conservative Government towards India, and warned the Congress leaders not to expect much from the Macdonald Government. They based their views on the dictum of Disraeli—"India must never be made the sport of party."

Lord Irwin's Announcement

Lord Irwin's visit to England in 1929 coincided with the advent of Labour Party to office. It was also the time when the members of the Statutory Commission were drafting their Report. Lord Irwin emphasised the need of assuring Indian politicians that the goal of India's political status was nothing short of Dominion Status.

On his return from England, he made the following announcement —

I "In view of the doubts which have been expressed

both in Great Britain and in India regarding the interpretations to be placed on the intentions of the British Government in enacting the Statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the Declaration of 1917 that the natural issue of India's constitutional progress as there contemplated is the attainment of Dominion Status. In the full realisation of this policy, it is evidently important that the Indian States should be afforded an opportunity of finding their place.

- 2 The adoption by the Prime Minister of Sir John Simon's recommendation of 'a conference in which His Majesty's Government should meet representatives both of British India and of the States, for the purpose of seeking the greatest possible measure of agreement for the final proposals to submit to Parliament
- 3 It is as unprofitable to deny the right of Parliament to form its free and deliberate judgment on the problem as it would be shortsighted of Parliament to underrate the importance of trying to reach a solution which might carry with it the willing consent of political India.

His Excellency concluded his pronouncement with these words —

I trust that the action of His Majesty's Government may enlist the concurrence of all sections of opinion in India and break through the webs of mistrust that have lately clogged the relations between India and Great Britain.

The Viceroy's pronouncement had the desired effect and was greeted by all political parties in India as an effective declaration in satisfaction of their

demands, and even inspired the non co-operating leaders to issue a lengthy statement, appreciating the sincerity of the declaration, as also the desire of the British Government to placate Indian opinion.

The Report

That brings us to the end of one period in India's political progress. Let us now turn to the Statutory Commission's Report. The Commission issued its Report in two volumes in June, 1930. The two volumes have been aptly characterised as a "magnificent treasure house of fact and comment." The Report was unanimous on all important issues. Although the procedure had been to submit the Report to the Parliament for consideration, it was decided in this case to set up a Conference of representatives of British India and Indian States who would meet His Majesty's Government to help in drawing up a Constitution for India.

The Conference which was accordingly set up is known as the Round Table Conference. To turn again to the recommendations of the Commission. A detailed summary of the Report is not necessary here. It would suffice to say that the Report was, however, framed in the spirit of Montague Declaration and the Commission declared that

"The progressive realisation of responsible government in British India as an integral part of the British Empire is the fixed object to the attainment of which, in co operation with the Indian peoples themselves, British policy stands pledged, the obstacles in the way cannot be treated as defeating that object or affording a discharge from its pursuit."

While the need of an advance was recognised by the Commission, it scrupulously avoided the word "Dominion Status". And because of this deliberate omission of the promise of Dominion Status, the Report was described as a "dead letter" by the Indian Liberals. The Congress press denounced it in scathing terms recalling the prophecy of Pundit Moti Lal Nehru that the failure of the Commission was a foregone conclusion. Even the minor communities expressed disappointment. In England, however, the recommendations were acclaimed as sound and reasonable, as "carrying constitutional advance to the limits of wisdom and expediency."

The cry of the Congress leaders that the recommendations of the Commission were "insulting and derogatory to the dignity of India" gave a fresh stimulus to the Civil Disobedience Movement which had already been started in March 1930 as a result of the failure of negotiations between the Viceroy and Mahatma Gandhi. The Liberals, holding fast to their faith in Lord Irwin and the Round Table Conference, made desperate effort to persuade Gandhiji to call off the Movement. But nothing came out of it.

IV

In the last section we have related circumstances that led to the promise of "some sort of Conference", after the Statutory Commission submitted their Report. We are now to follow the proceedings of the three Round Table Conferences that were held in London with a view to arrive at an agreed Constitution for India.

The First Round Table Conference

The First Conference was opened by King George

V on November 12, 1930 which concluded its session on January 19, 1931. The total number of delegates was 89, including 57 from British India, 16 representatives of Indian States, and 16 members of the Parliamentary delegation. The Indian National Congress was not represented in the Conference and most of the Congress leaders including Mahatma Gandhi were in prison at that time.

A significant feature of the Conference was the presence of the Indian Princes who were invited in accordance with the suggestion of Sir John Simon made to the Prime Minister. They readily accepted the invitation and took a very important part in the proceedings.

In the very first session of the Conference, His Highness, the Maharaja of Bikaner made a dramatic pronouncement in favour of a Federal government embracing the two Indias, viz., the British India and the Indian India. The result was, as one writer put it, 'the tocsin of Dominion Status ceased to sound.'

This announcement introduced an entirely new feature and was welcomed by the Imperial Government. The British Indian Delegates readily welcomed the suggestion and the unanimity of the Indian Delegates was a surprise to British Statesmen, who expected the break-up of the Conference over this very issue. But the reason was obvious. The Indian politicians felt that the alliance of the Indian Princes would greatly strengthen India's claim to self-government. The British Delegates, on the other hand, saw some advantage in gaining time in making the final decision in

regard to the new Constitution for India

For weeks the details of the Constitution engaged the attention of the Conference and its nine Sub committees. In the end, however, their efforts proved abortive. Of course there was nothing amazing about it. The tragic failure of the Conference was obvious, for what else one could expect from an assembly of this nature—composed as it was of veterans of communal interest. The remarks of His Excellency, Salvador de Madriaga on the failure of the Disarmament Conference come more vividly to one's mind. He said 'It was as foolish to expect a disarmament convention from such a commission as a declaration of atheism from a Commission of clergymen.'

The Conference, therefore, terminated without arriving at any definite conclusions. However, the Delegates returned home with one word on their lips 'The Federation.'

The Second R T Conference

Then came the Second Round Table Conference. Meanwhile efforts were being made to bring in the Congress. Lord Irwin moved by some important Liberals like Sir Tej and Mr M R Jayakar proceeded to negotiate terms with Mahatma Gandhi and was successful in achieving what came to be known as the 'Gandhi Irwin Pact.' As a result of this the Congress decided to be represented in the Second Round Table Conference with its sole representative in Mahatma Gandhi.

In the meantime changes had taken place in the Home Government. The position of a minority

government could not last long and it became necessary to form a coalition. Under the National Government, which now succeeded the Labour minority Government, Sir Samuel Hoare succeeded Mr Wedgewood Benn as the Secretary of State for India.

Composition

The total membership of the Second Round Table Conference was increased to 114. The most important feature of this Conference was the part played by Mahatma Gandhi. We shall refer to this presently. But first let us analyse the various sections in the Conference.

The first group was that of the Princes led by His Highness, the Maharaja of Patiala who now favoured a confederation of Indian States. Some of the premier Indian States still adhered to the federal idea. It appeared that the decision of the Congress to take part in the Second Round Table Conference put the oligarchy of Indian States on its guard. At any rate the Indian Princes came to the Conference with the idea of securing an irreducible minimum of essential conditions for their entry into the federal scheme.

The second group of Indian Liberals hopeful of striking a better bargain with the government with the presence of Gandhi in opposition, who would make demands quite unacceptable to any British government.

The third group of British Conservatives strengthened by the formation of the National government were determined to insist upon adequate and effective limitations being imposed upon the Constitution.

Such being the frame of mind of the different groups that re-assembled at the Second Round Table Conference, the obvious result ensued—the Conference achieved no unanimity on any thing. The minorities question remained undecided and the communal antagonism unreconciled. The Indian Princes could not come to any agreement amongst themselves in regard to their place in the Federation. At last, came, as usual, a declaration from the Prime Minister, now at the head of the National Government which reiterated the policy embodied in the first Round Table Conference and added that the Cabinet regarded federation as the only solution of India's constitutional problems. The Conference came to an end on December 1.

Gandhiji's Part

So far as Mahatma Gandhi's contribution to the Second Round Table Conference was concerned, he faithfully adhered to the Congress demand for complete independence, which, he argued, was not inconsistent with an 'indissoluble partnership' with the British people. In the details of the federal structure he showed little interest. In his parting words to the Prime Minister, he declared that he and the Congress, he represented, had come to the parting of the ways and that he did not know in what direction his path would now lie. Whatever might be the result of his participation in the Conference, it served well the cause of the Congress by the publicity his words received.

On their way to India the delegates were in varying moods. The Indian Princes were now mainly concerned with the problem of paramountcy, the Indian Liberals

with central responsibility the minority communities with communal representation and reservation of seats, and Mahatma Gandhi with the next phase of the Congress

The promulgation of the ordinance rule and the imprisonment of some of his associates made his task extremely difficult. On his return to India he was faced with a tense atmosphere and he soon found himself in Yerwada Central Prison.

The Third R T Conference

Then came the Third Round Table Conference to consider the Reports of the various committees appointed by the Second Round Table Conference. Its size was smaller and the agenda was more clearly defined. Both the Congress party in India and the Labour party in England abstained from it.

The outstanding feature of this Conference was the anxiety of His Majesty's Government and the British delegation to bring all matters of discussion down to concrete forms. They adopted less formal and more expeditious procedure.

At the close of the Conference the Secretary of State for India made three important announcements viz., (1) that the accession to the federation of about 50 per cent of the States in number and population, would be regarded as justifying the inauguration of the federation, (2) that the Moslem community would be granted 33½ per cent of the seats in the Central Legislature allotted to British India, and (3) that Sind and Orissa would be separate provinces.

We have now come to the end of the three Round

Table Conferences. The outstanding gain was the creation of a helpful precedent for free discussion and negotiations between the Imperial government and Indian representatives on political questions. It is claimed that the Conference had initiated a new technique of achieving liberty "through negotiation, by argument." In a letter to the "Spectator", poet Rabindranath Tagore wrote —

"The invitation to a Round Table Conference accorded to the representatives of the people who can with perfect impunity be throttled into silence or trampled into a pulp, is in itself a sign of the time undreamt of even half a century ago."

V

The White Paper

The final proposals of the Government for Indian Constitutional Reforms were embodied in the famous White Paper. The underlying proposals of the scheme may be defined as Federation, Provincial Autonomy, and Central Responsibility. These were all approved by the Joint Select Committee and have been embodied in the Act of 1935. That very Act came into force on April 1, 1937.

A General Review

In the preceding pages we have surveyed as briefly as possible the evolution of the New Act of 1935. These stages would serve to show a certain degree of continuity all through in the progress of constitutionalism in India. As will be evident, the new Act though in form a new Act, in fact, is an enlargement of the 1919 Act. It is fundamentally based on the same principles which were for the first time announced by

Mr Montague in the House of Commons in 1917. As then, so now the main sphere affected is the Province. Though, however, the new Act envisages an All India Federation and the grant of central responsibility, that is hypothetical. One does not know when the Indian federation and its concomitant central responsibility would come in force. But certainly Part III of the Act with reference to Provincial Governments has come into force on April 1 1937 and in the following pages we propose to examine this very aspect of the constitutional structure in particular.

CHAPTER II

THE FEDERAL SYSTEM OF INDIA

Emergence of the federal idea

The Government of India Act 1935 lays down a federal form of government for India. The idea of a United States of India is not a new one. On the British side the value of the princes' help and co operation was first perceived during the events of the mutiny when Canning described them as the 'break waters to the storm which would otherwise have swept over us in one great wave'. Subsequently Lord Lytton mooted out the plan of the formation of a privy council of ruling chiefs to advise the viceroy. When the Minto Morley reforms were on the anvil the proposal to bring in the princes was revived by Lord Minto but it had to be given up due to the opposition of Lord Morley, the Secretary of State for India and the princes themselves who did not relish the idea of sitting in counsel on a footing of equality with men of humbler birth from British India. The coming of the Montague Chelmsford reforms and the prospects of British India becoming democratic, however, made the princes anxious for their position. They demanded and obtained a deliberative body of their own, the Chamber of Princes, to discuss matters of common concern, and they were further permitted to appoint a small standing committee

of the Chamber which would be consulted by the various departments of Government of India as regards matters of common interest to British India and the States

Sir Frederic Whyte the first president of the Indian Legislative Assembly advocated a federal form of government for India about the year 1920. In a speech from his seat in the Legislative Assembly Sir Malcom Huley foreshadowed federation as the ultimate solution of the Indian Constitutional problem in 1924. Political opinion in British India however always felt a sort of apprehension regarding the bonafides of such proposals. Thus the Nehru report* after quoting Prof Newton's definition of what a genuine federation should be went on to say 'It would be in our opinion a most one sided arrangement if the Indian States desire to join the federation so as to influence by their votes and otherwise, the policy and legislation of the Indian Legislature without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation after realising the full implications of the federal idea we shall heartily welcome their decision.'

The Simon Commission report envisaged federation as a distant ideal and so did every one else till after the first Round Table Conference actually met. Till the inner history of this Conference comes to be written it will remain a mystery as to what transpired behind the scenes but within a week of the meeting of the Conference a federation consisting of the Indian

* Nehru Report P 83

States and the British Indian provinces was proposed by the British delegates and accepted by the princes. Responsibility at the centre was made conditional upon it and the reservations and safeguards. The details of the scheme were elaborated in the course of the second and third R T Conference and ultimately embodied in the Government of India Act 1935.

1 Units of the federation and the mode of its formation

The units of the Indian federation will be (a) the Governors' Provinces, 11 in number, (b) the Chief Commissioners' Provinces, and (c) such of the Indian States as may voluntarily accede to it. The tribal and excluded areas will also be subject to the jurisdiction of the federal government of India, but they have not been given a representation on its various organs.

So far as the British Indian units i.e. the Governors' and Chief Commissioners' provinces are concerned, federation is compulsory for them. Upon its establishment by the Royal Proclamation, they automatically become the members of it. The legal basis of the federation, in regard to the British Indian units will be, in the words of the Joint Select Committee Report 'first, the resumption into the hands of the Crown of all rights, authority, and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor General in Council, or in the Provincial Governments and Administration, and second, their redistribution in such manner as the Act may prescribe between the Central (federal) Government on the one hand, and

the Provinces on the other ' * In other words for British India, the federation is an act of the Crown, and not a free and deliberate agreement of its various parts.

It is otherwise, however, with the States They enter the federation, by their rulers signing an Instrument of Accession voluntarily. Any state may keep out, if it so chooses. When a ruler has signed an Instrument of Accession, and it has been accepted by His Majesty, only then the State in question becomes a potential member of the federation. We have said 'potential', because though the States are free to enter the federation or not, the federation itself cannot be established till a specified number of States have expressed their willingness to join it. It is a condition precedent of the establishment of the federation that at least as many States should have assented to join it as (a) are entitled to choose not less than 52 members of the Council of State out of the total of 104 seats assigned to the States on that body, (b) comprise within themselves at least half of the total population of all the states put together. † When the necessary number of States have assented to joining the federation, their Instruments of Accession have been accepted by the Crown, and the two houses of Parliament present to him an address for doing so, then but not till then, His Majesty will issue a Proclamation ‡ announcing the establishment of the federation on a specified date. The Act lays down no time limit within which federation must

* Joint Select Committee Report Para 153

† Sec. 5 Sub. section 2 clauses (a) and (b) of 1935 Act.

‡ Section 5 (1) of 1935 Act.

materialise. Having joined it once, a State cannot get out of the federation.

Division of Powers under the Indian federation

Division of powers between the federal Government and the units is a characteristic feature of all the federations. In the older federations such as those of U. S. A. and Switzerland, there is found a clear-cut division of powers into two lists, one federal and the other of the units. Such a division, however, proves inconvenient on account of its rigidity. Sometimes it happens that in regard to subjects assigned to the units, a uniform policy for the whole country becomes necessary, but federal legislation on the subject is constitutionally impossible, till by an amendment of the Constitution, it is transferred to the federal list. Accordingly the newer federations, most notably that of Germany as planned by the Weimar Constitution of 1919, divide powers not under two but three lists—one federal, the other of units, and the third concurrent. On the concurrent list are placed all those subjects which are local from the administrative point of view, but in respect of which national regulation and control becomes nevertheless necessary from time to time.

The three-list system of the division of powers has been adopted by the Indian federation. In the first place, there is the list of the exclusively federal subjects. There are altogether 59 items on it, the more important of them being defence, foreign relations including relations with Indian States, immigration and emigration, extradition, naturalisation, railways, posts, telegraph and telephone, foreign commerce, shipping

and navigation explosives, arms and ammunitions, federal elections and services etc. The federal sources of revenue also mentioned in this list are customs, salt, opium income tax (on non-agricultural incomes) succession duties (except on landed estates) stamp and excise duties of certain kinds corporation taxes and any other taxes or fees etc. in connection with the exclusively federal subjects. In the second place there is the exclusively provincial list the more important items on which are law and order police and prisons administration of justice education (excluding Benares and Aligarh Universities) local self-government public health and medical relief agriculture irrigation forests industries trade and commerce weights and measures provincial elections and services poor relief, unemployment and generally any matter of merely local or private nature. The sources of revenue mentioned in this list are land revenue excise duties on intoxicants stamps, taxes on agricultural incomes, death duties on landed estates, and taxes on entertainments, trades professions hearths and windows, animals and boats, sale and consumption of goods advertisements etc. etc. Finally there is the concurrent list the more important subjects in which are jurisdiction and authority of all courts except federal and supreme courts civil and criminal law and procedure marriage and divorce adoption wills and trusts bankruptcies, newspapers and press mines, factories and trade unions, labour welfare and disputes cinema films inter provincial infectious diseases etc. As pointed out above the subjects on this list are subject to the simultaneous jurisdiction of federal and provincial governments both

Conflict of jurisdiction in the concurrent sphere

What is to happen if federal and provincial legislations conflict in respect of concurrent subjects? In other federations such a contingency is avoided by the provision that a valid federal law will override a conflicting law made by a unit. The makers of the Indian constitution however, shrank from adopting this rule lest an over zealous federal government should oust the provinces altogether from the concurrent field. Hence the rule adopted by the Indian constitution is that while normally a federal act overrides a provincial one on concurrent subjects a provincial act if assented to by the Governor General after reservation prevails over prior federal legislation. The federal legislature may again vary such a provincial act, but the bill for amending the law in question requires the previous sanction of the Governor General for its introduction in the federal legislature.* To illustrate the point let us suppose that, a federal law imposing certain restrictions on the press is on the statute book. The U P legislature passes an Act removing the restriction. Now the Governor of U P will reserve such a law for the consideration of the Governor General and if assented to by him the press will become free in U P. If the federal legislature again wants to pass a law abrogating the U P law and reimposing restrictions on U P presses it can do so but only with the previous assent of the Governor General. The essence of this procedure is to make the Governor General the arbiter of the conflicting claims of the federal and provincial legislatures in the sphere of the concurrent subjects.

*Section 107 of 1935 Act

In deciding such matters the Governor General is to act in *his discretion*.

Short of actual conflict it is also possible that a federal law on concurrent subject may run counter to the general policy of a provincial government or may impose on it functions and duties involving financial burden. A development like this is likely to make serious inroads on provincial autonomy and to guard against such a danger the principle of prior consultation with the provinces has been laid down. Art. XXV of the Instrument of Instructions says that "Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative list the Governor General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces".

/Residuary Powers

Residuary powers are those which have not found explicit or implicit mention in any of the lists. The fact is that it is impossible to make an exhaustive list of all the governmental powers however careful we may be about it. New powers keep on arising in the changing circumstances of our time. For example, no

body ever thought of the air becoming a possible subject of government control before the days of the Great War. Yet, the development of aircraft has made air control one of the vital powers of government now-a-days. Now other federations of the world leave the residuary powers in their entirety either in the hands of the units as in U S A, Switzerland and Australia, or those of the federal government as in Canada. In India the Governor General acting *in his discretion* is to decide as occasion arises as to which of the two parties is to have a particular residuary power. The propriety of an arrangement like this is open to grave doubt. Keith for example, condemns it on the ground that the allocation of a residuary power this way or that involves a judicial interpretation of the several legislative lists, and he hopes that the Governor General will consult the federal Court and abide by its advice in all such cases.

Federal Invasion of the Provincial Sphere in Emergencies

The Governor General may authorise the federal legislature to legislate on any of the purely provincial subjects if a grave emergency exists threatening the security of India by war or internal disturbance*. At the request of the legislatures of two or more provinces, the federal legislature may enact a common law regulating a provincial subject for all the provinces concerned.

Delegation of Powers by the Federation to the Provinces

The federal legislature may delegate powers and duties

*Section 102 of the Government of India Act 1935

to the provincial legislatures even in respect of matters outside the purely provincial list * This is an excellent provision making for elasticity

The Division of Powers in relation to the Federating States

In all the federations of the world the division of powers between the federal government and the various units is uniform so that the latter are among themselves and also in relation to the federation on a footing of equality Under the Indian federation, however this is not so In relation to themselves the states allow for less power to the federation than do the provinces, or conversely speaking the federating States have been left with far greater powers in their hands than the provinces In the first place the States are expected to accept only 47 items out of a total of 59 included in the exclusively federal list and even in case of these 47, particular States may make a few reservations in the Instrument of Accession In the second place the States do not give to the federation exclusive control even over the limited number of subjects which they accept as federal, but continue to retain for themselves concurrent jurisdiction over them, State legislatures will continue to legislate on them even after the federation, subject to the rule that State laws on a particular subject do not conflict with a federal law on the same In the third place, the subjects mentioned in the concurrent list are in case of the States wholly within their sphere of authority and the federal legislature has no jurisdiction over them Thus within the States the federation will have no power

* Section 124 of the Government of India Act, 1935

to regulate such matters as civil and criminal law and procedure, factories, labour welfare and disputes, the press etc., though within the provinces it will regulate these concurrently with the provincial government, lastly, as a result of the above limitations, the financial powers of the federation over the States are of an extremely limited kind. So far as direct taxation is concerned, the federation can impose only two taxes on State subjects, namely, a corporation tax and a special surcharge on income tax. The former of these can be levied only after 10 years of the establishment of the federation and may be compounded for a lump sum to be paid by the ruler, while the latter is leviable only in emergencies after all possible sources of revenue and all economies have been exhausted.

The sacrifice that the States will make in entering the federation has indeed been made as small as possible. Many of the subjects which they will accept as federal are not under their control even to-day, for example, defence, foreign relations etc., but are already in the hands of the Government of India. Yet the rights that they acquire by joining the federation will be the same as those of the provinces. Their representatives will participate and vote in determination of policy and legislation on all federal matters regardless of the fact that many of these, the States have not accepted as federal at all. Thus State representatives will influence the making of laws to which they will not themselves have to submit, and the levying of taxes which they themselves will not have to pay. In the matter of representation in the federal legislature, too, the States have been given weightage. With a population of

27.7% of the total they have 33.3% of the seats in the Federal Assembly and 40% in the Council of State. All this is extremely unsatisfactory from the point of view of British India.

Administrative Relations between the Federal Government and the Units 9443

The execution of federal laws is vested in the federal government itself and there is no doubt that many of the federal services such as customs railways post offices etc. will be administered by federal officers as they are now run by officers of the Government of India. But as the experience of U.S.A. shows keeping of a federal staff for the enforcement of all federal laws is both costly and productive of friction. Accordingly the Indian Constitution provides that the federal government may entrust the provinces and the States the administration of federal laws*. To ensure that the execution of federal laws may not be done in a halfhearted manner by the provincial and State authorities the Governor General has been empowered to issue directions to rulers of States and provinces as to how the federal laws in question are to be administered.† Should a provincial government decline to carry out these instructions the Governor General acting in his discretion may issue orders to the Governor embodying those instructions‡. The Governors it should be noted are under a special responsibility to

* Section 124 of the Government of India Act 1935

† Section 125 & 126 (1) of the Government of India Act 1935

‡ Section 126 (2) of the Government of India Act 1935

secure compliance with lawful orders of the Governor General even in opposition to the wishes of their ministry. The Governor General is also empowered *in his discretion* to issue instructions to the Governor of a province as to how executive power and authority in the province are to be exercised for the purpose of preventing any grave menace to the peace and tranquility of India *. It was the exercise of this power by the Governor General that was responsible for the ministerial crises in U P and Bihar in February 1938. Finally the constitution enjoins that the executive authority of provinces and federated States should be exercised in such a way as not to impede or prejudice the executive authority of the federation †

The federation may also give directions to a province as to the construction and maintenance of military communications. The Governor General may ask any Governor to act as his agent in the province in respect of the reserved subjects, i.e. defence, foreign relations, ecclesiastical affairs, tribal areas etc.

In case of disputes between two or more units the Governor General may decide after investigation by a commission unless decision by the King in Council is preferred ‡. No appeal to any court lies in any case.

The effect of these provisions on Provincial autonomy

All the critics of the Indian Constitution are agreed that the above powers of coercion and control in the

* Section 126 (5) of the 1935 Act

† Section 126 (1) and 128 of the 1935 Act

‡ Sections 130—134 of the 1935 Act

hands of the federal Government or the Governor General make a serious inroad on the autonomy which the provinces are supposed to enjoy under the present Constitution. The essence of provincial autonomy is that within their defined sphere, the provinces should have undisputed control free from interference from any other authority. Now these provisions of the Constitution which enable the Governor General in the name of the province to exercise the executive authority of the province in a particular way are, to borrow the words of Keith, 'a very striking derogation from provincial autonomy.' Such directions when issued to the Governor will compel him to act according to them even in opposition to the ministry of the province. If the ministry acquiesces in this, provincial autonomy vanishes inasmuch as something imposed from above and opposed to the wishes of the responsible provincial authority takes place. If the ministry, on the other hand, sticks to its guns, there is no other course open to it but to resign, precipitating thus, a constitutional crisis. This is illustrated by the events that happened in U. P. and Bihar towards the end of February 1938. The ministries of these two provinces wanted to release all the political prisoners unconditionally. The Government demanded the examination of each individual case apparently by themselves and to their satisfaction. The ministries refusing to allow this, the matter was referred to the Governor-General who under Sec. 126 (5) ordered the Governors to reject the advice of the ministers and as a result of this the U P and Bihar ministries resigned. Fortunately good sense prevailed, and the ministerial demand was

substantially conceded, thus ending the constitutional crisis, but the case illustrates the point we have been trying to emphasise, namely, that the exercise of these discretionary powers by the Governor-General will either destroy provincial autonomy, or the free operation of the latter will result in these powers falling into disuse, at any rate in their present form.

What is wrong is not these powers of the federal coercion and control as such, but their location in the hands of a non-responsible authority like the Governor-General. If a responsible federal ministry, convinced that affairs in a province were threatening the maintenance of law and order, had ordered the provincial ministry to act in a way different from that it had adopted, it is inconceivable that public opinion in the country would not support the federal government. The reason for this is that we can depend on a federal government responsible to the people for utilising its coercive powers against the provinces in a proper way. If it made a frivolous or reactionary use of them, it would be pulled down from its seat of power by popular wrath, but such deterrents do not operate in the case of the Governor-General acting in *his discretion*. When a responsible authority pulls up another responsible but inferior authority, there is no diminution in the sum total of self-government in the country, but when an irresponsible authority interferes with a responsible one, there is. The conclusion, therefore, is that the federal powers of coercion and control over the provinces should remain unimpaired. In all the federations some such powers are vested in the federal authorities, and in India with its strong centrifugal tendencies, such

powers are vitally necessary. But these powers must be placed in the hands of the federal ministry, and not in those of the Governor-General.

Inter provincial and State co-operation in non-federal matters

For co operation among States and provinces in non federal matters the King-in-Council is empowered to set up an inter provincial council charged with the duty of inquiring into and advising as to inter provincial disputes, and investigating subjects of common interest to one or more provinces and the federation, and making recommendations in particular for better co-ordination of policy and action on any such subjects.

Comparison of Indian with Foreign and Dominion federal systems

Keith says that the essentials of the Indian federation were borrowed from the Canadian and Australian models (which in their turn had been largely influenced by the U. S. A. pattern), while the continental models furnished little. The Indian federation, according to him, exhibits all the characteristics of a federal government—a written and a rigid Constitution, an elaborate division of powers, and a federal court to act as an umpire in constitutional disputes.

Nevertheless the Indian federation as embodied in the Government of India Act, 1935 has certain abnormal features of its own which distinguish it from every other federation of the world. Incidentally, some of these abnormalities are traceable to the continental federal models contrary to Keith's supposition that they contributed nothing to the Indian federation.

The first source of the abnormality of the Indian federation is the heterogeneity of its units. Speaking of the German federal system of 1871 President Lowell said that it consisted of a lion (Prussia), half a dozen foxes, and a score of mice. Varying the description a little, we might say that the Indian federation consists of about a dozen domesticated bulls, and several hundred wild wolves, hyms, and jackals. It is a union of 11 Governors' provinces more or less democratic, and 500 and odd autocratic States at varying stages of mediæval feudalism. This heterogeneity of units both in regard to their size and political character makes itself felt in the constitutional structure of the federation in several ways, for example, (a) their status at the time of the federation and consequently the terms on which they federate, (b) the non uniform federal sphere of powers in relation to the States and the provinces, (c) the different forms of government existing in the units, (d) the different manner in which the two kinds of units send their representatives to the federal legislature, and (e) the composite character of some of the units themselves made up of small states.

The second source of abnormality of the Indian federal system is to be found in the fact that the constitution confers full responsible government neither in the federal nor in the provincial sphere. As a consequence of this, the Indian federal system presents itself in vivid contrast to other federations in the following particulars —

(1) The heads of the constitution both at the centre and in the provinces have discretionary powers unparalleled elsewhere. There are the reservations,

safeguards, special responsibility of the executive head, in several matters, their power to legislate and make financial grants irrespective of the legislatures etc. etc.

(2) There is no power of constitutional amendment given to the Indian Legislatures or the people

(3) The relations between the federation and the units are more stringent in case of India than any where else, with the possible exception of the German federation of 1919. The Indian provinces can never acquire the status of the American or Australian states under the present scheme

(4) The arrangements regarding the concurrent and the residuary powers are without parallel as elsewhere. In respect of concurrent powers, in other federal systems the claims of the federal government are paramount. Residuary powers are nowhere divided between the two parties as in India and in such a clumsy way

(5) The provincial Governors figure in a dual capacity namely, as constitutional heads of their provinces, and as agents and subordinates of higher authorities like the Governor General and the Secretary of State for India. In Canada and Australia the Lieutenant-Governors and Governors are like constitutional monarchs, subject to no higher control.

(6) The Indian Federal Court and the High Courts have no right to shut out appeals to the Privy Council as the Supreme Court of Canada and the High Court of Australia have done as regards constitutional and other disputes

Opposition of Indian Political opinion to the federal scheme

Indian political opinion is bitterly opposed to the federal scheme as embodied in the Government of India Act 1935. Of the various political parties in India the Congress and the Muslim League have expressed their determination to oppose the very inauguration of the scheme. The Indian Liberal Federation also has condemned it but is prepared to work it if it is introduced. The Hindu Mahasabha is the only political party in the country to demand its early inauguration, though even this body has condemned its imperfections. The Princes who showed such eagerness to accept the scheme at the first Round Table Conference have since then been trying to back out of it if possible. What are the reasons for this all but universal hostility to the federal part of the New Indian Constitution?

So far as nationalist political opinion in the country is concerned it sees in the federal scheme a deliberate conspiracy to throttle the democratic and progressive forces of British India by combining against them all the reactionary elements in the country. The composition of the federal legislature specially of its lower house has been devised in such a way that a progressive party like the Congress will find it almost impossible to secure a majority on it. Of its 375 seats 125 have been given to the States whose representatives will be nominated by the rulers. It is feared that the nominated state representatives will take the place of the old official and nominated block. A hint from the Viceregal house will always determine their votes. The 250 seats of British India have been divided among the various

communities and interests, and the scheme of indirect election by the provincial assemblies using the method of the single transferable vote is such as to reflect in a mathematically accurate fashion all the petty groups of those assemblies in the quota of representatives that these bodies send to federal assembly. By a detailed analysis, Prof. K. T. Shah * shows that the most powerful party in the country, the Congress, will not be able to capture more than 130 of the seats in the federal assembly, and consequently it will not be in a position to form the ministry. This will be the consequence of bringing in the nominated representatives of princes. They will combine with other reactionary elements in the federal legislature to defeat every measure of a progressive character.

This is the main objection of nationalist India to the federal scheme as such. Of course there are also the reservations, the safeguards, and the numerous discretionary powers of the Governor-General, whose effect will be to curtail severely the sphere of responsibility of the federal ministry. In matters of finance particularly about 80 % of the federal budget is non-votable by the legislature so that even a genuinely nationalist ministry cannot control more than 20 % of the national expenditure. All these features of the New Indian Constitution are bitterly resented by the Indian people and contribute greatly to the volume of opposition against it. But here we are concerned not with the Indian constitution as a whole but only with the federal aspect of it, and so far as that aspect by itself is concerned, we can put one finger on the

* Federal Structure in India, Page 248.

provision for the *nomination* of the State representatives as being the most potent, if not the sole factor, in the unpopularity of the federal scheme. If the States could be induced to allow their representatives to the federal legislature to be popularly elected on a franchise as wide as in British India, much of the objection to the federal scheme would disappear. Substitution of direct for indirect election of British Indian representatives also is eminently desirable.

Muslim opinion in the country has among others also a communal reason for opposing the federation. Among the British Indian seats in the federal legislature, the Muslims have been given a $33\frac{1}{3}\%$ share by the communal award, but of the 125 seats, their share remains indeterminate. Since most of the princes are Hindu, the Muslim's fear is that they will not nominate a sufficient number of Muslims. They see in the federation, therefore, 'a Hindu oligarchy at the centre'. And this is precisely the reason why the Hindu Mahasabha wants an early inauguration of the federation.

Lastly, the reluctance of the princes themselves to join the federation, in spite of the most favoured treatment that they have received in the federal scheme, is due to their fear of the possible repercussions of coming into intimate touch with the turbulent politics of British India. The democratic contagion from British India, they feel, is sure to invade their preserves once they enter the federation. It is true that their autonomy and sovereignty is effectively safeguarded in the federal scheme, but it is also true that federal governments all the world over have shown an uncanny and irresistible

tendency to increase their powers by eating into those of the States. India can be no exception to this general rule and so the reluctance of the princes to join the federation is explainable by their uneasiness as to their future if they do it. With British India opposing the scheme tooth and nail, it will appear like an unfriendly act on the part of the princes if they rush into it thus facilitating its establishment.

Possibility of the inauguration of the Federal Scheme

Technically it is possible for the British Government to inaugurate the federal scheme as soon as it has persuaded a sufficient number of states to join it. Considering the peculiar position which the States occupy vis à vis the paramount power, the States are bound to come in if and when the British Government makes up its mind to launch the scheme. Legal experts say that it is impossible for the provincial legislatures and ministries to prevent the establishment of the federal scheme by constitutional means. But political wisdom demands that the federal scheme should not be introduced without conciliating the opinion in the country at least to a certain extent. As suggested above this can be done without undertaking any elaborate amendment of the Government of India Act 1935. The British Government has considerable influence with the princes and many of the princes themselves are politically alert. It should not, therefore, be difficult to persuade them to permit election of their representatives to the federal legislature. In fairness to their Muslim subjects, the States should reserve for them a share of the State

quota of seats on a population basis but no weightage or separate electorates should be allowed. Direct election for British Indian seats should be permitted by issuing an order in council under sections 308 and 309 of the Act. For the rest the Secretary of State for India and the Governor General should give an assurance to work the federal part of the Constitution in the same liberal spirit as they promised in the case of the provinces. *This much done it can be confidently predicted that the country will be prepared to give a reasonable trial to the federal scheme and that basis of mutual good will between India and Great Britain will have been laid down which the interests of both so urgently demand specially in the present dry anarchic conditions of world politics*

CHAPTER III

THE FEDERAL EXECUTIVE

The federal executive of India under the Government of India Act 1935 consists of the Governor General, his counsellors and the federal cabinet.

A The Governor General

Appointment

The Governor General is appointed by a Commission under the Royal Sign Manual. The appointment is made by His Majesty on the advice of the British Prime Minister. It has now become an established tradition that the Governor General must be appointed from amongst the prominent public men of Great Britain. No member of the Indian Civil Services is appointed to this post even temporarily because it is felt that steeped into the bureaucratic traditions of their class these men become psychologically unfitted to take the wider view of things which is so essential for the head of a government to do. Since Lord Cornwallis was first appointed Governor General directly from Britain, there have been only two exceptions to this general rule namely, the elevation of Sir John Shore, and Sir John Lawrence to the Governor Generalship. But these departures did not prove very successful, and it is now extremely unlikely that the experiment will be repeated.

The Viceroy

Before the passing of the Act of 1935, the Governor General used to be also the Viceroy of India representing in the latter capacity the Crown in relation to the Indian States. Section 3 of the New Act separates these two offices so that now they can be held by different men. Now the Governor General as such is not the Viceroy. But there is nothing in the section to prevent both these offices being held by the same man. As a matter of fact they are held by the same man at present and this arrangement will continue probably for a long time to come.

The term and the emoluments of the Governor General

Though he is appointed on the advice of the Prime Minister of the day, the post of the Governor General is not a political one. He does not resign when the ministry that got him appointed goes out of office. He holds office for a fixed term of five years in the course of which he is entitled to take a leave of absence for four months. This period of respite since the days of Lord Irwin has come to assume a political significance of some importance for it is utilised for acquainting the British Ministry with the political situation in India in a first hand manner which the head of the Indian Government is in the best position to do.

The salary of the Governor General is fixed at Rs 2, 50, 800 per annum. Though the office of the Viceroy has now been made separate and distinct from that of the Governor General, no salary is provided for it yet. In addition to the salary, the Governor General is also given handsome allowance, of the various kinds.

Professor Shah estimates the total cost of the Governor General to India as being over Rs 17,62 000 per year

The Powers of the Governor General

Heads of parliamentary or responsible government are not permitted the exercise of any real powers. They are expected to act on the advice of their responsible ministry in every matter. This is the case with the British King, the French President and the Governors General of the Dominions. The Government of India Act, 1935 does not establish full responsible government in the federal sphere though it makes an approach to it. The position of the Governor General of India therefore, is, sui generis, not comparable to that of the head of any other government. Many years ago President Lowell remarked that there were only two real despots in the world—the Czar of Russia, and the Governor General of India. The despotic character of the Governor General of India continues to exist under the New Constitution.

Reservations

As a matter of fact there is a sort of dyarchy in the sphere of the federal government of India. There is a sphere of powers relating to defence, foreign relations, tribal and excluded areas, and ecclesiastical affairs which is reserved entirely for the Governor General. In administering these subjects the Governor General is his own master, subject of course to the control of the Home Government. He is empowered to appoint not more than three councillors to aid and advise him in administering these subjects.* The councillors hold

* Section 11 (2) of the 1935 Act

office during his pleasure and are entirely responsible to him. The federal cabinet has no say in these matters. As a corollary of this arrangement, the Governor General has been vested with sufficient legislative and financial powers to provide for these subjects, so that he may not be dependent on the federal legislature for the necessary laws and supplies.

Special Responsibilities of the Governor-General

The reservations, then, are the exclusive preserve of the Governor General. Federal subjects other than these constitute the sphere within which the ministers will operate, but even here the Governor General may intervene and disregard ministerial advice in certain contingencies involving the so called special responsibilities of the Governor General. These special responsibilities are —

- (a) The prevention of a grave menace to the peace of India
- (b) Safeguarding the financial credit and stability of the federal government.
- (c) Legitimate interests of the minorities
- (d) Legitimate interests of the public services
- (e) Prevention of commercial discrimination against British or Burmese goods
- (f) Rights of the Indian States, and
- (g) Securing of adequate funds for these special responsibilities of his

Other Discretionary Powers of the Governor General

Besides these special responsibilities, there are numerous other matters in respect of which the

Governor-General is entitled to act *in his discretion* or 'individual judgment' that is to say, without consulting his ministers at all or in disregard of their advice. These powers are dispersed all over the various sections of the Act. The more important instances of such powers are the appointment and dismissal of the ministers, councillors, and financial adviser, summoning, proroguing and dissolving of the federal assembly, convening of joint sessions, assent, reservation or disallowance of bills, and the exercise of his various extraordinary powers in relation to legislation and finance. The Governor-General is the sole judge of the fact whether a matter does or does not come within his discretionary authority.

Governor-General's powers in regard to Legislation and Finance

The Governor General summons, prorogues and dissolves the legislative assembly. He makes for the legislature rules of business relating to any matters affecting his discretionary functions. He can also make rules prohibiting the asking of questions or discussion of motions relating to an Indian State (outside the federal sphere), a foreign State or Prince, excluded areas, provincial affairs, or the personal conduct of a ruler or a member of his family. Likewise he can make rules for securing the timely completion of the financial business. His previous sanction is required for the introduction into the federal legislature of certain kinds of bills specially those affecting his discretionary powers. He can recommend to the legislature the passage of bills needed for the due performance of his discretionary powers. In case of the legislature not

complying with his request, he himself can enact such bills into law which are called Governor General's Acts. He can issue ordinances relating to his discretionary powers, and also other matters but in the latter case he does so only on the advice of his ministers and when the legislature is not in session. He can address the legislature at any time or send messages to it and can convene joint sessions of the two Chambers for resolving differences. Finally, he has the power to assent to, or withhold assent from, or reserve bills passed by the federal legislature. He can do the same in relation to provincial bills reserved by the Governors for his considerations.

As regards finance, he is the sole authority to determine what amounts are needed for the reserved departments and for certain fixed charges. The legislature has no say as regards this part of the budget. Even with regard to remainder, the Governor General may recommend the voting of certain specified sums required for his special responsibilities, and in case of the legislature *failing to do so or reducing the demands*, he himself can authenticate and authorise them. After the budget has been voted by the legislature, it has to receive the assent of the Governor General and then only the schedule of expenditure embodied in it becomes authentic.

Powers of regulations and control over the provincial governments and the federated States

The Governor General can issue orders to the provincial governors in relation to the maintenance of peace and security. He supervises and directs the action of Governors, in respect of the exercise of their

discretionary powers by them. Certain kinds of provincial bills have to be reserved for his consideration. He has got important financial powers regarding the distribution of the net proceeds of certain taxes (for example the income-tax) among the provinces, and exercises control over provincial borrowings. He can issue administrative orders to the heads of the provinces and of the federated States for the proper execution of federal laws or the exercise of provincial and State executive authority in such a manner as not to impede the executive authority of the federation.

Extra ordinary powers of the Governor General in the event of the Break down of the Constitution

When the Governor General is of opinion that the government cannot be carried on according to the provisions of the Constitution, he may by proclamation assume himself any functions vested in any federal authority except the federal court. Such a proclamation has to be communicated to the Secretary of State for India and the British Parliament at once. Ordinarily such a proclamation ceases to operate at the expiration of six months but its duration can be extended upto a maximum of three years by the resolutions of both houses of Parliament each of which can give it extension of 12 months at a time.

The Prerogative of Mercy

The Governor General has got the power to pardon offenders

The Instrument of Instructions to the Governor General

On his appointment, the Governor General receives

from His Majesty an Instrument of Instructions to guide him in the exercise of his various powers, specially those of a discretionary nature. The Instrument of Instructions had played a great part in the Constitutional development of the British Dominions, whereby suitable alterations in the instructions issued to the successive incumbents of that office the Governor Generalship was gradually transformed into a constitutional headship. No formal amendment of their constitutions was needed to effect this. Properly utilised the Instrument of Instructions therefore can be a great source of elasticity in relation to the constitution proper. But there is a great difference between the Dominion and the Indian Instruments of Instructions. The former were always prerogative documents so that they could easily be changed by the executive action of the British ministry but the latter i.e. Indian Instrument of Instructions has to be approved by the two Houses of Parliament. Making of changes in it therefore is nearly as cumbersome as a formal amendment of the Constitution itself.

Criticism of the Governor General's powers

The various discretionary and extra ordinary powers of the Governor General detract a great deal from responsibility at the centre as well as from provincial autonomy. The consequence of vesting such powers in the head of even a semi-parliamentary government will be constant friction between him and the ministers. This indeed has been the experience of Britain herself during the 16th, 17th and the 18th centuries. In the brief period that the provincial autonomy has been at work, the consequence of Governors using their

discretionary powers has always been a ministerial crisis. In the course of the debate in the House of Commons over the Government of India Bill Mr. Churchill said.

"What you are giving at the Centre is not responsibility. What you are giving is the power to extort responsibility. What you are giving is, by parliamentary methods and by parliamentary arguments, the power to extort inch by inch and month by month, the full responsibility. But you are not giving it now."

This indeed is the greatest cause of the unpopularity of the federal scheme with the Indian political opinion.

Apart from this, it has also been said that the Governor-General must almost be a superman to discharge properly all the duties and responsibilities that have been laid on him. One result of this is bound to be the delegation of many important things to subordinate officials who will 'run' the Governor-General in such matters. Too heavy work means blunders which in a country like India are fraught with more mischief than possibly anywhere else.

CHAPTER IV

THE FEDERAL EXECUTIVE (*Continued*)

B The Federal Cabinet

Composition

Section 9 of the Government of India Act, 1935 says that there shall be a council of ministers, not exceeding ten in number 'to aid and advise the Governor General except in so far as he is to act in his discretion or individual judgment.' The Instrument of Instructions* enjoins the Governor General to select his ministers 'in consultation with the person who, in his judgment, is most likely to command a stable majority in the legislature .' This means that the Governor General will in practice entrust the formation of the cabinet to the leader of the party or the Coalition group which commands a majority in the legislature, specially the federal assembly. The ministers must be persons 'who will best be in a position collectively to command the confidence of the legislature ' So far as possible, representatives of the federated States and important minority communities are to be included in the cabinet, but in doing so the Governor General 'shall bear constantly in mind the need for fostering a sense of joint responsibility among his ministers '

* Para B, section 8 of the Instrument of Instructions.

The fixing of the size of the cabinet statutorily may prove on occasions to be a source of difficulty for the premiers, since for the stability of the cabinet majority in the legislature it may be necessary to secure the support of more than ten leading members by including them in the ministry. In the case of the provinces there is no such restriction on the strength of the cabinet, and in the federal sphere too the Act might have done well to leave the matter to the unfettered discretion of the premier designate. While every premier will naturally be anxious to make his government broad based by including in it the representatives of the minorities and States this can only be done if there are present within the party entrusted with the task of cabinet formation, such representatives. It will otherwise be impossible to foster a sense of joint responsibility among the members of the cabinet. The experience of the provinces encourages us to hope that no undue insistence will be made by the Governor General to secure compliance with this part of his Instructions. In Orissa the Congress party had no Muslims in its ranks and so the cabinet of that province was formed without a muslim member. In Bombay the Muslim League made a representation to the Governor that the nominees of the League alone should represent the Muslim community in the cabinet, but the Governor very properly refused this request pointing out that the only constitutional obligation on him was to see that their community did not go unrepresented in the cabinet, but the appointment of any particular person as minister was clearly beyond the scope of his powers.

Salaries of the ministers

Salaries of the ministers are determined by the federal legislature, but they cannot be varied during the ministers' term of office. This again is an unnecessary provision fettering the discretion of the legislature. One of the parliamentary modes of expressing dissatisfaction with the ministers is a motion to reduce their salaries, but in view of this provision such a motion will probably be ultra vires. Pending determination by the legislature, the Governor General fixes the salaries of the ministers.

The Governor General and the cabinet

The Governor General may, *in his discretion*, preside at the meetings of the cabinet. While this provision is not without precedent in other parliamentary countries the common experience everywhere has been that it does not work well. It is embarrassing for individual ministers to differ from the head of government or from their colleagues in the presence of one who is not one of themselves. Internal divisions of opinion within the cabinet are everywhere a closely guarded secret and they are not divulged even to the head of the Constitution. This provision however, can be nullified by the ministers, if they settle things before a formal meeting with the Governor General in the chair takes place, and place before him only their joint decisions.

The scope of ministerial responsibility

As already pointed out the scope of ministerial responsibility does not coincide with the entire sphere of the federal government. They can advise the

Governor General and the latter is required to act on their advice only within certain well defined limits. We may conveniently study the restrictions placed on ministers' powers and responsibilities in relation to the following matters —

- ✓ (a) The reserved subjects.
- ✓ (b) The special responsibilities of the Governor-General and his other discretionary powers.
- ✓ (c) Ministers and finance, and
- ✓ (d) Ministers and trade, commerce and industry.

(a) Ministers and the reserved subjects

The most important of the reserved subjects are defence and foreign relations. The ministers exercise no authority over them. The Governor General administers them with the help of councillors appointed by and responsible to himself. The Indian representatives at the Round Table Conference, while they agreed to the removal of these subjects from ministerial jurisdiction for a time, demand nevertheless that the ministers should be able to exercise some influence if not actual powers in regard to these departments. The Joint Select Committee recognised the justice of this demand.

"No department of Government", they said, "can be completely self-contained and a department of Defence is no exception to this rule. Its administration does not indeed normally infringe upon the work of other Departments save in time of war or other grave emergency, but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their co-operation at moments of crisis" *.

* Joint Select Committee Report, Page 97

Now the demands of the British Indian delegation as submitted in their joint memorandum were (a) that the Governor General & counsellor in charge of defence should always be a non official Indian preferably an elected member of the legislature, (b) that the control now exercised by the finance member, and finance department should be continued, and (c) that all questions relating to army policy and budget should be considered by the entire ministry including both ministers and counsellors. The first two of these demands were turned down but the last was accepted. The Instrument of Instructions says

Although it is provided in the said Act that the Governor General shall exercise his functions in part with the aid and advice of ministers nevertheless it is our will and pleasure that our Governor General shall encourage the practice of joint consultation between himself his counsellors and his ministers. And seeing that the Defence of India must to an increasing extent be the concern of Indian people it is our will in especial that our Governor General should have regard to this instruction in his administration of the Department of Defence *

He must particularly consult the minister as regards the appointment of Indian officers to the army or the employment of Indian forces on service outside India. As for the military finance, the Instrument of Instructions says that

'Although the financial control of Defence administration must be exercised by the Governor General at his discretion, nevertheless the Federal Department of finance shall be kept in close touch with this control

* Instrument of Instructions Art XVII

by such arrangement as may prove feasible, and that the Federal ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the services of Defence are settled and laid before the Federal Legislature' *

In matters of defence and defence expenditure, therefore, the ministers will have a certain amount of influence, though no definite power. The nature and extent of this influence greatly depends on the personal equation between the Governor General and the ministers.

As regards foreign relations, no specific clause of the Act or Instrument of Instructions requires the Governor General to consult the ministers. Relations with the British Dominions, however, are not included in the category of foreign relations, and they will accordingly be regulated by the ministers. The ministers have no power even to conclude commercial treaties or arrangements with the foreign countries. These also will be regulated by the reserved department of foreign affairs though in such cases the Governor General will be guided by the advice of the appropriate minister on the merits of a trade or commercial issue.

(b) The ministers and the Governor General's special responsibilities

Departments other than the reserved ones will be under ministerial control, and in respect of their affairs the Governor-General will normally act on the advice of ministers. But he may reject their advice on the ground that one of his special responsibilities is involved. It should clearly be understood that the

* Instrument of Instructions, Art. XIX.

special responsibilities of the Governor General do not constitute a separate department excluded from the jurisdiction of the ministers. They are on the other hand, certain contingencies which may arise in connection with the activities of any of the departments under the control of ministers. Again when a special responsibility of the Governor General is involved in a particular matter, it does not mean that ministerial advice is automatically or necessarily excluded from it. On the contrary, the spirit of the Act requires the Governor General to consult the ministers even in such cases and follow their advice if at all possible. It is only when after a full and frank discussion, the Governor General is still unable to see eye to eye with his ministers that he is to act *in his discretion* and in disregard of ministerial advice. The same is true of other discretionary powers of the Governor General also.

(c) The ministers and finance

The Governor General has a special responsibility to safe-guard the financial stability and credit of the federation. To assist him in discharge of this responsibility, the Governor General is empowered to appoint in consultation with the ministry, a financial adviser who may also assist the ministry when required. This power of the Governor General mainly relates to the control of budgetary arrangements and borrowing but his interference is not confined to these matters by the Act. It may extend to other aspects of federal finance as well.

The currency and exchange policy of the country is regulated by the Reserve Bank of India, the Governor,

Deputy Governor, and four directors of which will be appointed by the Governor General himself

As is shown more fully in the chapter on federal finance, more than 80 % of the federal expenditure is determined directly or indirectly by the Governor General himself, since it relates to the reserved subjects and certain other fixed charges. This means that the federal ministers will control less than 20 % of the federal expenditure

It is clear, therefore that the powers of the federal ministry in regard to finance are of an extremely limited character. It is an axiom of political science that he who controls the purse controls everything else. The limitations on the financial powers of the ministry, therefore, are bound to affect adversely their general powers also.

(d) Ministers and trade, industry, and commerce

Trade, industry and commerce are of vital moment to the prosperity of any nation. In an industrially backward country like India in which foreign interests have entrenched themselves firmly, it is absolutely necessary to give preferential and protective treatment to the indigenous enterprise. But the federal ministry is prevented from adequately encouraging Indian enterprise by the so called commercial safe guards provided in the Constitution. These safe guards, briefly speaking, are as follows

(a) The Governor General has a special responsibility to prevent discrimination against British goods imported into India. The Governor General can intervene into and set aside any tariff arrangements

sanctioned by the ministry and the legislature if in his opinion the effect of such an arrangement is to injure British trade in India rather than advance the Indian trade interests

(b) British subjects domiciled in United Kingdom shall be exempt from any Indian law imposing on foreigners restrictions as regards entry into the country, travel residence holding of property or public offices carrying on of any trade industry etc etc *

(c) Companies incorporated in United Kingdom either before or after the passing of the Government of India Act 1935, and doing business in or with India are placed on a footing of equality with Companies incorporated in India as regards taxation and general treatment etc †

(d) Any bounties or subsidies granted to Companies of India incorporated on must be available also for Companies of British incorporation engaged at the time in business in British India ‡

(e) Ships and aircrafts registered in United Kingdom cannot be subjugated by any Indian law to any discrimination §

(f) The Governor General is instructed to withhold his sanction from any law imposing disability or restriction upon any Britisher practising a profession or business before the passing of such a law His previous

* Section 111 Chapter III part V of the Government of India Act 1935

† Section 112 and 113 of the 1935 Act

‡ Section 116 of the 1935 Act

§ Section 115 of the 1935 Act

sanction is required for the introduction of any bill prescribing the qualifications for carrying on any given profession *

It should be noted that all these safe guards are based on the principle of reciprocity, that is to say India cannot impose discriminatory restrictions such as mentioned above on British nationals and companies so long as Great Britain herself has not imposed such restrictions on Indians or Indian Companies. Should Great Britain at any time impose any such restriction on Indians or Indian concerns, the Indian legislature is released from the safe guards and can penalise Britishers in the same way. This is a very clever way of disguising the naked injustice of these safe guards, but it deceives nobody. Indian nationals or companies have no business undertakings of any considerable magnitude in Great Britain. There is no question or need, therefore, of Great Britain discriminating against them. Britishers on the other hand have great business interests in India, and without discriminating against them to a certain extent, Indian enterprise can never come to its own. Proper reciprocity would require the initiative to be given to the Indian government and legislature. That is to say, to be fair the Act should have provided that if India discriminates against Britishers, Indian would also be discriminated against to the same extent in United Kingdom, but actually it is the other way round.

In view of these limitations and restrictions the scope of cabinet's power and responsibility is very narrow under the new Constitution.

* Section 119 of the 1935 Act

Cabinet Responsibility in practice

Sometimes it is said that the actual powers and responsibility of the cabinet cannot really be determined by the paper provision contained in the Constitution. The actual working of a cabinet system is largely determined by the political forces that are at work in the country. As a result of the impact of these forces constitutional provisions are modified by the growth of conventions. That is the reason why the cabinet system works in such widely different ways in the various countries of the world. Though similar in their formal constitutional powers, the British and the French cabinet systems, for example, do not work in the same way. If there are patriotic and compact political parties in the country, all of them equally anxious to widen the sphere of popular rights, they can wrest political power from the hands of even the most autocratic head of the state. This is the lesson of British constitutional history, and also of the working of the new constitution so far in the provinces. Thus in the so called Congress provinces it is well nigh impossible for the Governors to use their discretionary powers for if they do, the ministers will create a crisis by resigning, and since the r party is in majority in the legislature and influential with the people, no alternative ministry is possible. This has been demonstrated on more than one occasion in the U P, Bihar, Orissa etc. Confronted with a power fully supported and determined ministry, therefore, the Governor General will have to hold his autocratic powers in abeyance or else to suspend the Constitution altogether.

THE FEDERAL EXECUTIVE

All this is quite true, but the constitution of the federal assembly has been so adroitly framed that it is impossible for any single party, even the Congress to capture a majority of seats in it. Its total membership is 375 distributed as follows —

125	States representatives.
82	Muhammadan seats
6	Sikh seats
48	Special interests
9	Women's seats
105	General seats (including so-called caste seats.)

Of these, according to Prof. K. T. Shah* the Congress is likely to capture the following numbers—

State seats	Nil
General	92
Sikh and Muslim	12
Special	10 (labour seats).
Women	5
Others	10

Total	130
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Thus in a house of 375, the Congress which is the strongest political party of the country cannot hope to capture more than 130 seats, which means that it will not be in a majority. The federal cabinet, thus, will have to be a coalition cabinet, and such a cabinet is always heterogeneous and weak, lacks as it does in solid support. A weak cabinet cannot contend successfully with the Governor General. Hence it is clear that the

* Federal Structure in India, page 243

analogy of the provinces is inapplicable to the federal sphere. Things, would however, greatly improve if the provincial seats were filled by direct election, and the State representatives were chosen by the popular election instead of nomination by the rulers. But as things are, there is no hope of a strong cabinet being formed or healthy conventions of cabinet government growing up

CHAPTER V

THE FEDERAL LEGISLATURE

The Federal Legislature of India is a bicameral body, consisting of a Council of State, and a Federal House of Assembly.

A. The Council of State

Composition

It consists of 260 members in all—156 representatives of British India, and 104 of the States. Of British Indian representatives 150 will be elected and 6 nominated by the Governor-General. The quota of provinces are Madras, Bengal and U. P. 20 each, Bombay, Punjab, and Behar 16 each, C. P. 8, Assam, N.W.F. P., Orissa and Sindh 5 each, British Baluchistan, Delhi, Ajmer-Merwara and Coorg 1 each, while Europeans have 7, Indian Christians 2, and Anglo-Indians 1 seat on a non provincial basis. Of the 20 U. P. seats, 11 are General, 1 scheduled caste, 7 Muhammadan and 1 woman. In the Council of States as a whole general seats are 75, scheduled caste 6, Sikhs 4, Muslims 49, and women 6. With a population 25 % of entire country, the States have a heavy weightage for they get 40 % of the total seats.

The general, muslim, and, Sikh seats are filled by direct election from territorial constituencies in which the provinces will be divided for the purpose. There will be separate electorates. Baluchistan is not bound

by these rules and its representative may be chosen in any manner prescribed. Representatives of scheduled castes in any province are chosen by members of these castes in the provincial legislature and the same rule applies to women representatives. The representatives of Anglo Indians, Europeans and Indian Christians are indirectly elected by electoral colleges made up of representatives of the several communities in the provincial councils and assemblies.

Term

The term of members of Council of State is 9 years, one third of its members retiring every 3 years. It is thus a permanent body and cannot be dissolved.

The Presiding officer

The presiding officer of the Council of State is called the President. There is to be also a deputy President. Both these are elected by members, and are removable by votes of no confidence, of which 14 days' notice is required. Each time that there is a vacancy, the council is to fill it. If president and deputy president, both offices are vacant, the Governor General may appoint a person to do their duty. If both are temporarily absent such a person as is provided for by rules of procedure may preside, or in the last resort such person as may be determined upon by the House. The president and deputy president are paid such salaries as the House may determine by an Act, and until provision is thus made, as determined by the Governor General.

The president of the Council of State presides at the joint sessions of the two chambers.

Quorum

The quorum for the Council of State is fixed at $\frac{1}{6}$ of the total membership.

The Powers of the Council of State and its relations with the Assembly

The legislative and financial powers of the Council of State are co-ordinate with those of the Assembly except in this that demands for grants and money bills must originate in the Assembly * The Council of State can amend or reject any bill including even a money bill. Section 34 (2) recognises the priority of Assembly's right over demands only to this extent, that a demand rejected by the Assembly will not be submitted to the Council of State, and a demand reduced by the Assembly, will be submitted to the Upper Chamber only for the reduced amount, but if the Governor-General so directs even a rejected or reduced demand can be submitted to the Upper Chamber in its original form.

If a bill is passed by one chamber and rejected by the other, or the two chambers have finally disagreed as to amendments, or six months have elapsed from the reception of the bill by the other chamber without its being passed, the Governor-General may (unless the bill has lapsed by the dissolution of the Assembly) call a joint session of the two chambers. Where a bill concerns finance or Governor-General's special responsibilities, he may call a joint session forthwith without waiting for rejection, final disagreement, or lapsing of six

*Section 37 of the Government of India Act, 1935.

months 'Generally it may be said that the joint sitting of the two chambers will be held after a period of six months has elapsed This will enable the Governor General to gauge the popular feeling on the matter and give him time to decide whether to drop the bill or proceed with it' * If at a joint session a bill is passed by a majority of the total members present and retiring, it will be deemed to have passed

Likely Working of the Second Chamber

The Council of State is not intended by the framers of the Act to be merely a revising or delaying body, but to be an active and equal partner of the Assembly. Indeed on account of their greater representation in it, the States wanted it to be able to initiate money bills as well. To add to its prestige it has been made directly elective in contrast with the Assembly based on indirect election. It has been given powers to amend money bills which does not belong to second chambers in *Britain or the Dominions*

It is however, doubtful if the Council of State will be able to retain its equal power or build up equal influence with the lower chamber. The franchise for its election is of a very restricted kind. It is not representative of the units of the federation on a footing of equality as the American or Australian Senates are and finally it possesses no important executive or judicial powers such as belong to the American Senate. Its history may well be that of many other second chambers which started as equals of the lower chamber, but ended by accepting subordination to it.

* Sir Shafaat Ahmad Khan Indian Federation page 77

B. The Federal Assembly

The Federal Assembly consists of 375 members, 250 from British India and 125 from the States. Of the British Indian seats Madras, Bengal and U P have 37 each, Bombay, Bihar, and Punjab 30 each, C P 15, Assam 10, N W F P, Orissa and Sind 5 each, Delhi 2, British Baluchistan, Ajmer Merwara and Coorg 1 each, and there are 4 non provincial seats. The seats of each province are further distributed among the various communities and interests—thus, for example, of 37 U P. seats 19 are General, 3 Scheduled Caste, 12 Muslim, 1 Anglo Indian, 1 European, 1 Indian Christian, 1 Landholders, 1 Labour, and 1 Woman. Of the four non provincial seats 3 are for Commerce and Industry and 1 for Labour. Altogether there are 105 general seats, 19 Scheduled Castes, 6 Sikhs, 82 Muslims, 4 Anglo Indians, 8 Europeans, 11 Commerce and Industry, 7 Landholders, 10 Labour and 9 for Women, one of which must go to a Christian and at least 2 to a Muslim.

Qualifications and Disqualifications for members

A member of the Federal Assembly (as also of Council of State) must be a British subject or ruler or subject of a federated State, of 25 years of age (30 for Council of State), and have such other qualifications as may be prescribed. A candidate is disqualified for election if he (a) holds an office of profit under the Crown in India, other than an office excepted by a federal Act [From this category the following are excluded provincial and federal ministers and persons serving a State even if they are members of services

of the Crown] (b) is of unsound mind, (c) is an undischarged bankrupt, (d) is guilty of corrupt practices relating to elections, (e) has been sentenced to transportation or imprisonment for not less than 2 years unless 5 years have elapsed since his release, (f) has failed to lodge a return of election expenditure, having been nominated a candidate for federal legislature. A person serving a term of imprisonment can now no longer be returned as was Mr. Sarat Chandra Bose in 1934. Disqualification (e) makes no difference between political offenders and ordinary criminals.

Method of election

The members of Federal Assembly are indirectly elected. There is communal representation provided for Muslims, Sikhs, Christians, Europeans and Anglo-Indians. Hindu, Muslim and Sikh representatives are to be elected by the representatives of these communities in the provincial assemblies by the method of single transferable vote. Representatives of Scheduled Castes are chosen by an electorate consisting of successful candidates at primary elections to the provincial assembly and no one except these candidates shall be entitled to stand for Federal Assembly from Scheduled Castes. Women representatives are to be chosen by an electoral college in each province consisting of women members in the provincial assembly. Sir Shafaat Ahmad Khan,* however, maintains that the electoral college shall consist of women members of all provincial legislatures. Similar electoral colleges will elect Anglo Indian, European and Indian Christian representatives.

* Indian Federation, page 320.

Quorum

The quorum for the assembly is fixed at one-sixth of the total membership.

The Speaker

Same rules apply as for the president of Council of State.

Powers of the Indian Legislature

The powers of the Indian legislature relate to legislation, finance, and control of administration.

Legislation

The Indian Legislature is a non-sovereign body, and the executive in India can still legislate by itself. Accordingly the powers of the Indian legislature are neither unlimited nor exclusive. In the first place, there are certain matters regarding which it cannot legislate at all, for example, the Indian legislature (federal as well as provincial) has no power to make any law affecting the Sovereign or the Royal family, dominion or suzerainty of the Crown in any part of India, or the law of British Nationality, or the Army, Air Force and the Naval Discipline Acts, or the Law of Prize or Prize courts, or the Government of India Act, 1935 itself except in so far as permitted expressly by the Act itself.

In the second place, on certain other subjects the Indian Legislature can legislate only with the previous consent of the Governor-General. Without such previous consent, no bill or amendment can be moved in the Federal Legislature which (a) repeals, amends or is repugnant to any provisions of any Act of

Parliament extending to British India (b) repeals, amends or is repugnant to any Governor General's or Governor's Act or ordinance promulgated *in their discretion* (c) affects matters in respect of which the Governor General is required to act in his discretion (d) affects any Act relating to any police force (e) affects the procedure for criminal proceedings in which European British subjects are concerned (f) subjects persons not resident in British India or Companies not wholly controlled or managed in British India to greater taxation than persons resident in British India or Companies managed and controlled in British India, (g) affects grant of relief from any Federal tax in respect of income taxed or taxable in United Kingdom

In the third place, the exclusively provincial subjects cannot normally be legislated upon by the federal legislature, but in case of a grave emergency whereby the security of India is threatened whether by war or internal disturbance, the Federal Legislature will have power to make laws* for a province or any part thereof on any subject in the provincial list, of course with the previous consent of Governor General and all provincial laws in conflict with the federal laws, whether passed before or after the provincial law, will be void † Such laws will cease to operate six months after the revocation of proclamation Section 103 empowers the federal legislature to legislate for two or more provinces regarding a subject, if the legislatures of these provinces have requested it to do so by a resolution

*Section 102 (1) of the 1935 Act

†Section 102 (2) of the 1935 Act

The federal legislature subject to the above limi-
tations can legislate on all the federal and concurrent
 subjects, even with extra-territorial effect for British
 subjects and servants of the Crown in any part of India,
 or for British subjects domiciled in India wherever they
 may be, or to persons or ships or aircrafts registered
 in British India or a federated State wherever they
 may be, for the subject of federated States in respect
 of matters accepted as federal wherever they may be,
 for forces of any kind raised in India regarding their
 discipline etc., wherever they may be.

Under section 124 the Federal Legislature may
 delegate power and duties to provincial legislatures
 even in respect of matters outside the provincial list.
 This is an excellent provision making for elasticity.

Legislation on the Concurrent subjects

Subjects of concurrent jurisdiction often prove a
 source of friction and conflict between the federation
 and the units. Lord Selborne quoted the message of
 Sir Wilfrid Laurier of Canada while the Australian
 Constitution was in the making.

"Shun concurrent legislation as far as you possibly
 can—it is the very devil. It has been the curse of
 Canadian politics, the snare of statesman-ship. Avoid
 it".

A section of British Indian delegates at the Round
 Table Conference—the autonomists—wanted that the
 powers of the federal legislature in the concurrent field
 should be used only for securing uniform all-India
 legislation and no invidious distinctions should be made
 between different provinces and the other suggestion

was that prior assent of provinces or of a majority of them should be a condition precedent for the exercise of these powers by the federal legislature. The White Paper placed another restriction by debarrring the centre from so using its powers in respect of a concurrent subject as to impose financial obligation on the provinces. The Joint Select Committee did not allow it to be incorporated in the Act, but the Instrument of Instructions to the Governor General requires him to see that in executing any act of federal legislature on concurrent subjects, the provinces affected by any such measure should be duly consulted.

Conflict between federal and provincial laws on concurrent subjects is avoided as laid down in section 107. If a provincial law on a concurrent subject is repugnant to a federal law but having been reserved for Governor General or His Majesty's consideration, has been assented to, it will prevail, but of course it may later on be modified by a federal Act, but for introducing a Bill of that kind previous assent of the Governor General is needed. If a law of a federated State is repugnant to a federal law extending to that State the federal law will prevail and State law to the extent of repugnancy be void.

Federal Legislature in relation to federated States

The jurisdiction of the federal legislature in the States will not be exclusive. States will continue to legislate on subjects for which they have acceded, only subject to condition that their laws in respect of these subjects must not conflict with federal laws. But no province can legislate on an exclusively federal subject.

Exclusive Veto of federal laws

Every bill passed by the Indian Legislature requires the assent of the Governor General to become a law, the Governor General may give or withhold it *in his discretion* *. The Governor General may also reserve a bill for consideration of His Majesty, or he may return it to the legislature for reconsideration recommending certain changes †. Even after a bill is assented to by the Governor General the King may disallow it within twelve months ‡. If on a reserved bill the King keeps silent for twelve months it automatically lapses §. The Governor General may forbid the consideration of any bill or amendment at any stage on the ground that such discussion affects his special responsibilities regarding prevention of menace to peace and tranquility.

Executive Legislation

The Governor General is empowered to issue or ordinances when the federal legislature is not in session to meet any immediate needs, acting in his individual judgment; he usually at the request of the ministry. It will cease to operate at the expiration of six weeks from the reassembly of the legislature, or even earlier if disapproved by the resolution of the two chambers. It is subject to all these limitations to which other federal acts are ¶. If the Governor General thinks

* Section 32 (1) of the Act

† Section 32 (1) of the Act

‡ Section 32 (3) of the Act

§ Section 32 (2) of the Act

¶ Section 42 of the Act

that immediate action is necessary regarding one of his discretionary functions, he is empowered to promulgate ordinances which will have the force of law for six months or if renewed for another six months. Such ordinances have to be communicated to the Secretary of State for India at once and laid by him before Parliament. These ordinances also are subject to the same conditions as a federal law. * Lastly, for the satisfactory discharge of his discretionary functions, the Governor General is empowered to make acts which will have the same force as a federal law and be subject to same conditions. There are two methods of making the Governor-General's Acts. He may send a message to both the Chambers explaining the circumstances and may make an Act forthwith. Or he may attach to his message the text of the bill he considers necessary and enact it after the expiration of a month, giving due consideration to any changes or amendments which the Chambers suggest. † Of course if the legislature itself enacts the bill, there is an end of the matter. Every such Act has to be communicated to the Secretary of State and laid before the Parliament.

Financial Powers of the Indian Legislature

The Governor General will make rules for the timely completion of the financial business. No demand for a grant shall be made except on the recommendations of the Governor General [section 34-(4)]. A bill of amendment for (a) imposing or increasing any tax (b) for regulating the borrowing of money or amending

* Section 43 of the Act

† Section 44 of the Act

financial obligations of the federal government or (c) for declaring any expenditure charged on the revenues of the federation or for increasing the amount of any such expenditure cannot be introduced or moved except with the previous sanction of the Governor-General (section 37 1)

The Federal budget will be divided in three parts namely, (a) that which will not be submitted to the vote of the legislature at all (b) that which will be submitted to the vote of the legislature but in whose respect the Governor-General may restore any reduced or rejected demands, and (c) that which will be submitted to the vote of the legislature and in respect of which its decision will be final. The non votable part of the budget will consist of (i) salary and allowances of the Governor-General and other expenditure relating to his office (no discussion allowed), (ii) debt charges including sinking fund and redemption charges (iii) salaries and allowances of ministers, counsellors, financial adviser, advocate general (iv) salaries allowances and pensions of Judges of Federal Court and pensions to Judges of High Court (v) expenditure required for the reserved departments, tribal areas and administration of any territory under direct authority of the Governor-General, (vi) sums payable to Crown for discharging functions of paramountcy i.e. expenditure of political department, (vii) grants connected with the administration of excluded areas, (viii) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal, (ix) any expenditure declared by the Act to be so charged. It is estimated that these heads will cover about 80% of the total Federal budget.

With the exception of items (i) and (vi) others can be discussed in the legislature but not voted upon. As regards part (b) of the budget, it will contain proposals which the Governor General may regard as essential to the fulfilment of his special responsibilities. This part will be voted upon but the decision of the legislature may be set aside by the Governor General. It is, of course quite an indeterminate head. Part (c) is the part which is under absolute authority of the legislature.

After demands have been assented to by the Chambers the Governor General is to authenticate by his signature a schedule specifying (a) the grants made by the chamber, (b) sums charged on the revenue of federation but not exceeding in any case the amount shown in the statement previously laid before the legislature. This schedule is laid before the chambers but is not open to discussion or vote.

The Legislature and currency policy

Section 153 says that no bill or amendment which affects the coinage or currency of the federation or the constitution and functions of the Reserve Bank of India shall be introduced or moved in either chamber of the federal legislature without the previous sanction of the Governor General *in his discretion*. Section 152 provides for the appointment and removal of the Governor and deputy Governor of the Reserve Bank by the Governor General *in his discretion* and he also determines their term of office, salaries and allowances etc. Of the directors of Reserve Bank eight are elected by share holders and four nominated by the Governor-General in his individual judgment.

Fiscal policy and Legislature

Art. XIV of the Instrument of Instructions to the Governor-General says that in discharge of his special responsibility to prevent commercial discrimination the Governor-General "shall avoid action which would affect the competence of his Government and of the Federal legislature to develop their own fiscal and economic policy or would restrict their freedom to negotiate with the United Kingdom or with other countries for the securing of mutual tariff concessions, and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of United Kingdom rather than to further the economic interests of India."

Commercial Discrimination and Indian Legislature

This has already been discussed in connection with the Cabinet's scope of powers and responsibility.

Conclusion

The conclusion, therefore, is that the Indian Legislature is not the master in its own house. Executive legislation, ordinance making, restrictions as to finance, currency and tariff policy, the commercial safeguards etc., combine to bind the Indian Legislature hand and foot. The legislature of no self-governing country in the world is subject to such restrictions, and the extent to which these disappear in future will be the measure of Swaraj in India.

CHAPTER VI

THE FEDERAL JUDICIARY

The Federal Court

The federal judiciary in India consists of a single court—called the Federal Court. Since every federation implies a division of powers between the two parties to the union, some impartial authority is always needed to act as an umpire in the constitutional disputes that may arise between the federal government and the component units regarding their spheres of jurisdiction. It is usually the practice to assign this function to the highest court of the federation. Thus in U S A the Supreme Court and in Australia the High Court are the guardians of the Constitution. In case of India the Federal Court is intended to fill this position, though its authority is not as final as that of its Australian and American prototypes.

The Constitution of the Federal Court

The Federal Court of India consists at present of a Chief Justice and two puisne judges. The Act, however, permits a maximum of six puisne judges, or on the recommendation of the Federal legislature even more. Both the puisne judges at present are Indians. The judges of the Federal Court are appointed by the King under the Royal Sign Manual. To secure their independence it is provided that they hold office during good behaviour. The age of retirement for them is

sixty-five. They can be removed from office only on the ground of misbehaviour or infirmity of mind. Whether a judge of the Federal Court is infirm of mind, or has misbehaved is decided by His Majesty on the advice of the Judicial Committee of the Privy Council.

While these provisions make the judges adequately independent of the executive control, the position is unsatisfactory from the nationalist view-point of India. In Great Britain and other free countries, the removal of judges takes place on an address of the two Houses of the Legislature, but in case of India this is made dependent on the recommendation of an outside body, namely, the Judicial Committee of the Privy Council.

As a further guarantee of the judicial independence, the salaries and allowances of the judges of the Federal Court are made non-votable by the legislature. These are fixed by His Majesty by an Order-in-Council. It is further provided that the emoluments and the conditions of service of a federal judge cannot be varied to his disadvantage during his term of office.

Qualifications of the Judges of the Federal Court

No one can be appointed a federal judge unless he *

- (a) has been a judge of a High Court in British India or a federated State at least for five years ; or
- (b) is a barrister of England or Northern Ireland or a member of the Faculty of Advocates of Scotland, of at least ten years standing ; or

* Section (200-3) of the 1935 Act.

- (c) has been a pleader of a High Court in British India or a federated State, or of two or more such Courts in succession, for at least ten years

Indian public opinion has always been opposed to the appointment of the members of the Indian Civil Service as judges of High Courts. Some of them are, however, likely to find themselves appointed judges of the federal court by promotion from the High Courts.

Jurisdiction of the Federal Court

The jurisdiction of the Federal Court is of three kinds, namely, original, appellate, and advisory.

As a general rule, the original jurisdiction of the Federal Court extends to all the disputes between any two or more of the parties to the federation, if the existence of any legal right is involved in that dispute. But this rule in its entirety applies only to the British Indian units. In case of a federated State being a party to a dispute, the original jurisdiction of the Federal Court does not extend to it, unless the dispute (a) concerns the interpretation of the Constitution Act (including Orders in Council made under it) or of the extent of federal authority, legislative and executive, vested in the federation by virtue of the Instrument of Accession of that State, or (b) relates to administrative arrangements between the federation and the States regarding the execution of federal laws, or (c) relates to an agreement made after the establishment of the federation concerning the exercise of any of the paramountcy functions by the federation or a province, provided that, that agreement itself makes the

jurisdiction of the Federal Court applicable to such cases. In short, while the original jurisdiction of the Federal Court in case of British Indian units and the federation extends to any dispute involving a legal right, in case of States it extends only to cases of a strictly constitutional nature, but not to others, unless by express agreement with a State a provision is made to the contrary. Even constitutional disputes to which a federated State is a party may be excluded from the jurisdiction of the Federal Court by an express agreement between the State and the federal government to that effect. In case of British Indian units a certain amount of the Federal Court's jurisdiction is compulsory, while in case of States that amount might be restricted almost to the vanishing point by agreements into which they voluntarily enter.

The appellate jurisdiction of the Federal Court extends to cases certified by the High Courts as involving substantial questions of law regarding the interpretation of the Constitution Act and Orders in Council made under it. Apart from cases of constitutional law, the appellate jurisdiction of the Federal Court can also be extended to civil cases by an Act of the federal legislature. When such an Act has been passed, civil cases from provincial High Courts will come to it, if they involve a sum of money not less than Rs. 50,000 or Rs 15,000 as the federal Act may have laid down. Cases in which property of the like value is involved are similarly appealable, and finally any other cases also may be brought on appeal to the Federal Court by its special leave. The Federal Court apparently has no appellate jurisdiction in criminal cases.

These provisions for appeal to the Federal Court in civil cases are inapplicable to the federated States. Appeal from a High Court of a federated State lies to the Federal Court only in cases concerning the interpretation of the Constitution Act, * or of an Order in Council made under it, or of the extent of legislative or executive authority given to the federation by virtue of the Instrument of Accession of that State, or of administrative arrangements made with the State under Part VI of the Act. The form of such appeals is always that of a case sent for the opinion of the Federal Court by the State High Court, though in practice such opinion when given is binding like a judgment, and has to be enforced by the State High Court in question.

Finally, the advisory jurisdiction of the Federal Court extends to such questions as may be referred to it by the Governor General acting *in his discretion* for its opinion. † The questions likely to be referred to it are bound to be of a constitutional nature involving the interpretation of the Constitution. Its opinion in such cases will be given in open court by the concurrence of the majority of the judges. Any judge may record a dissenting opinion.

Other Powers of the Federal Court

The Federal Court is empowered to call any witnesses, and order the production of any document by way of evidence. It can punish for contempt. It can make rules regulating its own procedure, and legal

* Section 207 of the 1935 Act.

† Section 213 of the 1935 Act.

practice at its bar. Any supplementary powers necessary to enable the Court to discharge its duties efficiently may also be conferred on it by a federal Act. *

Appeals to the Privy Council

The establishment of the Federal Court does not mean the discontinuance of appeals to the Privy Council. In constitutional cases coming under the original jurisdiction of the Federal Court, appeals lie to the Judicial Committee of the Privy Council as a matter of right and without the leave of the Federal Court. In other cases appeal will lie to the Privy Council by special leave only either of the Privy Council itself or the Federal Court.

* Section 215 of the 1935 Act.

CHAPTER VII THE PROVINCES

A The formation of Provinces no scientific principle adopted

Under the New Constitution the Provinces are constituted the federating units along with the States. That a continent of the size and dimension of India could not be treated as one single unit for purposes of administration was quite obvious. It had to be split up into a number of subdivisions for administrative convenience. But the conquest of the country was spread over the long period of a century. As a consequence, that symmetry of arrangement and naturalness of division could not be possible. No scientific principles were adopted in the formation of Indian provinces. The basis of their division was neither ethnological nor linguistic nor cultural. The one and only consideration which brought them into existence was administrative convenience as visualized by officers who looked to the immediate future. And hence the Indian provinces have become heterogeneous conglomerations with a great variety of languages and society.

Demand for an alteration of provincial boundaries

Sind and Orrissa separated

This spasmodic and irrational method of the formation of the provinces has led to a considerable agitation for a re-arrangement of provincial boundaries on

more scientific and equitable lines. People who are closely united by ties of common race, common language and common culture, find themselves segregated. Several homogeneous groups have vigorously protested against their political dismemberment by the Government of India and demanded a realignment on the above lines. The Act of 1935 has recognised the claims of Sind and Orissa to provincial independence, and accordingly these two new provinces have been added to the list of Governors' provinces. *

Communal Complexion of the Provinces

While there is much to commend the redistribution of provincial boundaries on linguistic and cultural basis, there is now evident a cross-current in provincial groupings viz., the communal cleavage. Elsewhere we have traced the history of communalism. † It is to be noted here that this tendency of communal bifurcation is against the growth of national unity. The communal alignment of the eleven Governors' provinces is indicated by the following table:

* Section 64 of the Government of India Act, 1935 prescribes that the following shall be Governors' Provinces: Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. Their total number is eleven. Sind and Orissa have been newly created by Sec. 289 of the Act. Burma has been separated from and has, therefore, ceased to be a part of, India

† Chapter XII.

Percentage of Population

Provinces	Non mu- hammadans	Muham- madans	Sikhs	Indian Chris- tians	Anglo Indians	Euro- peans
Madras	90.0	6.7	—	3.2	.05	.02
Bombay	85.8	7.4	—	1.5	.1	.1
Bengal	45.1	54.6	—	.2	.05	.05
U. P.	85.4	14.3	—	.3	.02	.05
Punjab	32.0	55.2	11.1	1.5	.02	.1
Bihar	87.1	12.8	—	1.02	.01	.01
C. P. & Berar	95.4	4.4	—	.3	.03	.05
Assam	65.9	32.3	—	1.9	.01	.04
N. W. F. P.	5.8	91.8	2	.2	—	.3
Orissa	98.4	1.6	—	.4	—	.01
Sind	26.1	72.8	—	.2	.04	.2

Note The above figures indicate that out of the 11 Governors' Provinces, the province of the Punjab, Bengal, N. W. F. and Sind represent a muslim majority and in the other provinces the non muslims are in majority.

The Chief Commissioners' Provinces

In addition to the eleven Governors' Provinces, there are the following Chief Commissioners' Provinces

1. British Baluchistan.
2. Delhi.
3. Ajmer Merwara
4. Coorg.

5. The Andaman and Nicobar Islands.
6. The area known as Panth Piploda.
7. Such other Chief Commissioners' Provinces as may be created under the Act.

The administration of the Chief Commissioners' provinces is by the Governor-General acting to such extent as he thinks fit through a Chief Commissioner to be appointed by him *in his discretion*.

B. The Status and powers of the Provinces: Government of India unitary

Till 1919, the Government of India had been strictly speaking, unitary. The provinces were mere agents of the Central Government. Only some powers were delegated to them for administrative convenience.

Centralization

The cardinal point which emerges from the examination of the constitutional structure of India before 1919 is the concentration of authority at the centre. This centralization may be traced back to the Charter Act of 1833. By that Act the Government of India came to be established for the first time; its authority became co-extensive with the area of British possessions in India; and the independent legislative powers formally exercised by the Governments of Madras and Bombay were taken away.

Defects

Soon, however, it became evident that the administration of such a vast country could not be left concentrated in the hands of a single authority, even when the constitution of the State was unitary. Matters of local importance had to be separated from questions

of local needs. That alone could avoid inefficiency and confusion in operating the vast administrative machine.

Decentralization : Lord Mayo's scheme, 1870

Accordingly Lord Mayo's Government made the first attempt at decentralization in 1870. Larger financial power and responsibility were given to the provincial Governments. Certain departments like police, jails, education, medical, sanitation etc., were given for management to the Provinces. This scheme was inspired only by considerations of administrative convenience and facility.

Lord Lytton, 1877

The next step in the direction of devolution was taken in 1877 in the time of Lord Lytton. Certain new departments such as, excise, stamps, law and justice were added to those already transferred in 1870.

Lord Ripon , 1882

Lord Ripon introduced further improvements. Thus the process of devolution initiated by Lord Mayo went on progressing for over forty years after 1870. It was purely a matter of internal arrangement and did not require parliamentary legislation or sanction.

Summary of the position on the eve of 1919 Reforms

It would be useful to review briefly the relations between the Central and Provincial Governments on the eve of the Montagu-Chelmsford Reforms. There

were three groups of administrative departments. One group consisted of subjects of all-India importance like defence, customs, railways, coinage, posts and telegraphs, etc. It was controlled exclusively by the Government of India. The second group contained what were known as Provincial Heads. They were assigned to the provinces for management under certain conditions. Items like jails, police, education, roads, primarily came in this category. The last group represented Divided Heads. It included subjects like land revenue, excise, income tax, registration etc. Revenues from these as also administrative control over them were divided in a certain proportion between the central and provincial Governments.

Powers of taxation and borrowing

Provinces were not allowed to impose taxation without the previous sanction of the Governor-General. Nor were they allowed to borrow money on their own credit in the open money market. Bills to be introduced in the provincial legislatures required the previous sanction of the Governor-General. They required his subsequent assent also after passage. There were many codes, regulations and instructions promulgated by the Central Government for the whole country and these had to be strictly obeyed by every province.

Introduction of responsibility

The Montford Reforms changed the entire angle of vision. The principle of responsibility was accepted for the first time as a vital feature of India's political advance. The provinces were selected to serve as a

training-ground for the Indian people to learn the art of self-government. Hence the largest possible measure of independence in legislation, administration and finance had to be conceded to the provinces in the inevitable logic of this new angle of vision.

Demarcation of Central, Provincial spheres

With a view to giving effect to this new principle a bifurcation of central and provincial subjects was made. The old group of divided heads was abolished and functions came to be grouped into two separate lists, Central and Provincial. The principle of division was based on the necessity of a unity of control and uniformity of policy in central subjects on the one hand and the desirability of provincial and local freedom on the other—matters of all India importance like defence, foreign relations, customs, posts and telegraphs and currency remained with the Central Government while matters like education, agriculture, industry and local self-government passed on to the Provinces.

Relaxation of administrative control

The lists being completed it became necessary to relax administrative, legislative and financial control over the provinces. As to relaxation of administrative control it was laid down that in the transferred subjects the Government of India ordinarily should not interfere. On the reserved side, since no transfer of control had taken place, the Government of India retained the power of interference, direction and control. Still a convention was suggested that when the executive and the legislature in a province are unanimous in

their opinion on a certain problem, the Central Government's veto should not be ordinarily exercised.

Relaxation of financial control

Similar relaxation had been made in the financial sphere also. In the first place, the central and provincial budgets were separated. Definite sources of income were allocated to the provinces. The power of borrowing which had never been enjoyed by the provinces before was now conferred upon them. It was, however, laid down that the previous sanction of the Governor-General-in-Council for all loans floated in India, and of the Secretary of State for all loans floated in England, was necessary.

The power of taxation which was exclusively possessed by the Government of India in pre-Reform days had now been delegated to the provinces. They could now impose taxes, without the previous sanction of the Central Government, on heads that were allocated to them.

Relaxation of Legislative control

Steps had also been taken in the direction of legislative devolution. It was laid down that the previous sanction of the Governor-General was not necessary for legislation on purely provincial subjects. But in cases of (i) legislation aiming at repealing or modifying laws passed before 1861 unless otherwise declared by the Governor-General-in-Council; (ii) legislation which is likely to affect central subjects or the discipline of His Majesty's military, naval or air forces; (iii) for all legislation upon provincial subjects which are in whole or part subject to Indian

legislation, the previous sanction of the Governor-General in Council was made obligatory. Besides copies of all Acts which received the Governor's assent had to be sent to the Governor General for his assent, and until that was given, an Act did not get legal validity.

The Beginning of Provincial Autonomy

Such were the provinces of the Government of India which came for review by the Simon Commission. The Commission recommended that the process of devolution started by the Government of India Act, 1919 should be completed. "It is our intention," they reported, "that in future each province should be, as far as possible, mistress in her own house" *.

The Joint Select Committee accepted verbatim the recommendations of the Statutory Commission in this respect.

Of all the proposals in the White Paper', they pointed out, 'provincial autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the provinces, on the one hand, and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of the development in which the life of each province can find vigorous and adequate expression free from interference by a remote Central Government' †.

* Report Vol II of the Simon Commission, Para 27

† Joint Select Committee Report, Page- 29-30

Provincial autonomy defined

Judging from the above, we can define provincial autonomy as one whereby each of the Governors' Provinces will possess an executive and legislature having exclusive authority within the province in a precisely defined sphere, and in that exclusively defined sphere broadly free from control by the Central Government and Legislature

This scheme as now incorporated in the Act of 1935 represents a fundamental departure from the 1919 system. The departure is certainly one of principle and not of mere detail. Under the Act of 1919, the *provincial Governments exercised a devolved and not an original authority*. The new Act, though adopting the principles of 1919, goes further than merely devolving autonomous powers upon the provinces. On the contrary, it believes in complete separation of the two spheres giving the provinces a separate legal and constitutional status. Hence, under the New Constitution, the provinces are independent of any control, whatsoever, of the Central Government and they enjoy original powers directly authorised by the British Parliament which is the ultimate power in respect to the whole Indian administration, Central and Provincial alike

CHAPTER VIII

THE PROVINCIAL EXECUTIVE · THE GOVERNOR

The Governor his appointment and terms etc.

The executive government of the Province is vested in the King and is exercised by his representative, the Governor, to be appointed by a Commission under the Royal Sign Manual, his salary being fixed by the Act * His position is largely determined on the model of that of the Governor General from whom he differs in as much as there are no important departments of government which are reserved from the control of ministers. Further, he is absolved from any responsibility as regards the financial stability of his province.

The Governors of Provinces are generally appointed for a period of five years, and since 1925, have been allowed to take leave during their term of service for an aggregate period of four months. It has been more or less established as a convention of the constitution that whereas the Governor General is appointed by the King on the advice of the Prime Minister, the Governors of the Provinces are appointed by the King on the advice of the Secretary of State for India.

The Provincial Governors have been generally drawn from two classes mainly. (1) British public men and (2) Indian Civil Servants. The first class of

* Section 48 (1) & (2) of the 1935 Act

people are generally appointed to the Presidency Governorship while other Provincial Governors are promoted officials from the highest ranks of the Civil Service

Should Indians be appointed as Governors ?

Suggestions have often been thrown in the past to recruit Governors from among Indian public men. As to the merit of the suggestion much cannot be said in view of the fact that firstly public life in India has not developed to such an extent as to draw eminent persons for such a high office especially on account of the communal bitterness in the country. And secondly, much cannot be hoped out of an Indian Governor so long as the bureaucratic machine in India is carefully organised and minutely regulated by innumerable codes regulations or conventions. Under these circumstances the individuality of a Governor cannot count for very much in the actual working of the provincial administration in its routine aspect. Even from the point of view of initiative in matters of broad policy the Indian Governor would have very little scope because of the ultimate control of Secretary of State for India and the Parliament.

Dominion Practice

The Dominion practice in regard to appointment of Governors may be adopted in India with considerable advantage. There are indeed ways and means by which the appointment of Provincial Governors could be brought within the range of popular and local responsibility. The example of the Australian Commonwealth may be followed and the person to be

appointed allowed to be designated by the Provincial Legislature or by the responsible Provincial Executive

Scope of Provincial executive authority

Section 49 defines the scope of the Provincial Executive as follows —

(1) The Executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law or any Court, Judge, or Officer or any local or other authority.

(2) Subject to the provisions of this Act, the Executive authority of each province extends to the matters with respect to which the Legislature of a Province has power to make laws

The Governor and the Provincial Ministry

The next following section provides that the Executive authority of the province shall be exercised by Governor on the advice of his Council of Ministers who are to have a collective responsibility in such matters save where the Governor has to act 'in his discretion' or exercise 'his individual judgment'.

The Executive Functions

The executive functions of the Provincial Government fall under the following heads:—

- (1) Governor acting on the advice of his Ministers,
- (2) Governor acting in 'his individual judgment',

in which he may consult his Ministers but if he disagrees with their view he can act on his own opinion, and

- (3) Governor acting in 'his sole discretion', i.e., matters in which he need not consult his Ministers at all.

Numerically the biggest group is of those functions in which the Governor must act on the advice of his Ministers, though it is true that such matters, essentially speaking, belong to questions of administrative detail and hardly refer to initiative or change in the fundamental policy of government. The proper scope for the ministerial advice is in those matters in which the provincial legislature has power to legislate either exclusively or concurrently with the Federal legislature. Executive action must needs follow legislation. But even here there are safeguards in the shape of subordination to the Governor General* and in the right of the Governor to grant or withhold sanction to the introduction or discussion of a bill in the legislature, to make ordinances and promulgate acts[†] or in the shape of his veto over a bill passed by a Provincial Legislature as also his power to reserve a bill for His Majesty's pleasure. We shall discuss these safeguards fully in our chapter on Provincial Legislature ‡.

Discretionary Powers of the Governor

The Constitution, as provided in the Act of 1935, proceeds in the nature of instalments towards responsible

*Section 54 of the Act

†Section 88 89 of the Act

‡Chapter X

government. Consequently, while claiming to give the largest autonomy to the Provinces, it safeguards the exercise of power by the representatives of the people by giving (1) certain discretionary powers to the Governor without any consultation with his Ministers (b) certain other powers which the Governor is to exercise in his individual judgment, i.e. in which he may consult his Ministers but is not bound by their advice. These are described as 'special responsibilities of the Governor'.

This discretionary authority of the Governor extends for the most part to executive work but is not without encroachment in legislation also. The following are some of his discretionary powers in the field of administration —

(1) Under Section 50 of the Act the Governor in his discretion may preside at meetings of the Council of his Ministers. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act *in his discretion* or to exercise his individual judgment the decision of the Governor, *in his discretion*, shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought not to have exercised his individual judgment.

(2) Under Section 51 the Ministers shall be chosen by the Governor *in his discretion* and shall hold office during his pleasure.

(3) To combat crimes of violence committed with a view to overthrow the Government as by law established, the Governor may direct that some of his

specified functions shall be exercised by him *in his discretion*. (Section 57)

(4) All executive action of the government of a Province shall be expressed to be taken in the name of the Governor and the Governor shall make rules for the more convenient transaction of the business of government and for the allocation of the business among Ministers and to include provisions in these rules requiring Ministers and Secretaries to transmit to the Governor, all information regarding the Provincial Government. In all these the Governor shall act *in his discretion* after consulting his Ministers

Discretionary authority in Legislation

The *Legislative discretionary* authority of the Governor extends to the following cases —

(1) To summon, prorogue or dissolve the Legislative Assembly (Section 62) To address the Legislative Chamber or Chambers in regard to a bill under consideration by them, and also to send messages in respect of the same (Section 63)

(2) To remove certain disqualifications for a person to be a member of the Provincial Legislature (Section 69) To summon the two Chambers of a Bicameral Legislature to a joint sitting in respect to those bills which affect the discharge of his special responsibilities (Section 74)

(3) To assent to any bill passed by the Provincial Legislature or to withhold assent thereto or to reserve the bill for consideration by the Governor General (Sec. 75)

(4) To make rules after consultation with the Speaker or President of the Chambers for regulating the procedure of and the conduct of, business in the Legislature

The above is not certainly an exhaustive treatment of the discretionary authority of the Governor. All the same it would show that the most important part of the executive work is thus removed from the domain of responsible Ministers. Even as regards legislative work effective power of initiative and control are reserved to the Governor in addition to the numerous safeguards in respect to recommending bills and reserving them, when passed, for consideration by the Governor General or by His Majesty. From the moment the Legislature is summoned to the moment of its dissolution the Governor dominates in every process of legislation.

All this means that the provincial Governor is not merely the ornamental chief of the government but is the effective controlling and dominating head. The Ministers are his nominees to administer departments assigned to them by him.

Powers of the Governor to be exercised in his individual judgment

Special Responsibilities of the Governor

In addition to the afore-said discretionary powers, the Act empowers the Governor to exercise his individual judgment in certain cases. The most important of these are described in the Constitution in Section 52 as the 'special responsibilities of the Governor'. They are

(a) The prevention of any grave menace to the peace or tranquility of the province or any part thereof,

(b) the safeguarding of the legitimate interests of minorities,

(c) the securing to and to the dependents of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests,

(d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation,

(e) the securing of peace and good government of areas which by or under the provisions of this Act are declared to be partially excluded areas,

(f) the protection of the rights of any Indian States and the rights and dignity of the rulers thereof,

(g) the securing of the execution of orders or directions lawfully issued to him under Part VI of the Act by the Governor General in his discretion.

The suggestion of Indian Delegates to Round Table Conference on the problem of Governor's special Responsibilities

The subject of special responsibility was fully discussed by the Joint Select Committee in view of the proposals contained in the Joint Memorandum of the British India Delegation. We would study the recommendations of the Joint Committee a little more closely

to understand the real nature of the Governor's 'special responsibilities'

With regard to (a) the Joint Memorandum urged a double limitation firstly, that the 'special responsibility' itself should be restricted to cases of subversive movements or activities tending to crimes of violence, secondly that any action taken by the Governor should be confined to the department of Law and Order alone. In dissenting from this view the Joint Committee pointed out that terrorism, subversive movements, and crimes of violence while no doubt form the more serious menace to the peace of a province they do not exhaust the list. Still less did they agree to the limitation of the scope of Governor's action to the department of Law and Order. There are many other departments of administration, like land revenue and public health where ill advised measures may cause a serious menace.

With regard to (b) the Joint Memorandum suggested a definition of what constitutes 'legitimate interests'. While the Joint Committee turned down their recommendation they did elaborate the phrase by making it clear that the phrase does not refer to political and parliamentary minorities nor the safeguards of legitimate interests should mean the prevention of social and economic reform merely because a group of persons who claimed to be regarded as a minority do not like it.

Coming to (c) the Joint Memorandum said that the Governor's special responsibilities in respect to Services should be limited to rights and privileges

guaranteed to them by the Constitution. The Joint Committee insisted that the intention of this clause is not merely to guarantee legal rights to public servants but also equitable treatment.

With regard to (d) we have discussed this in the Chapters on Federal Executive. Coming now to (e) the position was clarified by defining 'rights' of a State as those not covered by its Instrument of Accession which may be prejudiced by administrative or legislative action of the Provincial Legislature.

As to (f) though the responsibility for the administration of partially excluded (as opposed to wholly excluded) areas will primarily rest upon Ministers, yet in view of the responsibility which Parliament has assumed towards backward and less civilized tracts in India, it is desirable to impose a special responsibility in this respect upon the Governor.

Finally, with regard to (g) it is evident that the Governor should be charged with a special responsibility for the execution of orders issued by the Governor-General, for the Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament.

The subject of special responsibilities excited a good deal of controversy over the question of acceptance of the Ministerial Offices by the Congress in Provinces where it had obtained a majority. The constitutional issue involved in these controversies shall be discussed in a later chapter.* Suffice it to say that so long as these powers remain on the Statute Book they may be exercised in a very real sense by

*Chapter XIX.

the Governor and that would hinder the growth of Constitutional Government thereby preventing the development of parliamentary responsibility in the Provinces

Governor's Special Powers

Purely executive action may not always suffice for the due discharge of the Governor's special responsibilities in some circumstances it may be essential that further powers should be at his disposal. Consequently the Governor of a Province has been given certain concurrent legislative and financial powers

(1) Section 90 of the Act empowers the Governor to enact *Governor's Act* or to suggest draft for the Governor's Act to be passed by the Legislature, if at any time it appears to him that for the purpose of enabling him satisfactorily to discharge the functions entrusted to his sole discretion, or on which he has to exercise his individual judgment provision should be made by legislation

It will be seen that under the Government of India Act 1919, a similar power of certification of a bill existed whenever it appeared to the Governor that the passage of the Bill was essential for the discharge of his responsibility in respect to reserved subjects. There is, however, one difference between the two, in the former Act a certified Bill was deemed to be an Act of the Legislature whereas now it is declared to be a Governor's Act. The Joint Committee recommended that all Governor's Acts should be laid before the Parliament and that the Governor before legislating or notifying his intentions to legislate should have the

concurrence of the Governor General These provisions have been incorporated in the Act

(2) The Ordinance power of the Governor is exercised in two circumstances When the Legislature is not in session and the Governor is satisfied that circumstances exist to promulgate an ordinance he may do so with the concurrence of his Ministers But every such Ordinance shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or when a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council (Section 88)

Secondly, with respect to certain subjects, regarding which the Governor is required to act in his discretion or to exercise his individual judgment, he can however, promulgate ordinances at any time Such an ordinance shall continue in operation for a period not exceeding six months as may be specified therein, but may, by a subsequent ordinance, be extended for a further period not exceeding six months (Section 89)

(3) In case of the failure of the constitutional machinery at any time when the Government of a Province cannot be carried on in accordance with the provisions of the Act, the Governor may by Proclamation —

- (a) declare that his functions shall, to such extent as may be specified in the Proclamation be exercised by him in his discretion.
- (b) assume to himself all or any of the powers

vested in or exercisable by any provincial body or authority

Any such Proclamation may be revoked or varied by a subsequent Proclamation

A Proclamation

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament,

(b) unless it is a Proclamation revoking a previous Proclamation shall cease to operate at the expiration of six months

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both the Houses of Parliament the Proclamation shall unless revoked continue in force for a further period of twelve months from the date on which it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years

The Joint Committee in justifying these provisions observed —

‘Events in more than one Province since the reforms of 1919 have shown that powers of this kind are unalappily not yet unnecessary and it is too soon to predict that even under responsible government their existence will never be necessary. The intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government leaving the remainder to function according to the ordinary law. A constitutional breakdown is no ordinary crisis and it is impossible to fore-see what measures the circumstances

might demand. It is right, therefore, that Governor should be armed with a general discretionary power to adopt such remedies as the case may require.*

Conclusion :

To sum up, the Governor enjoys a unique position under the Constitution. He is not only independent of his Ministry but also independent of the Legislature. One cannot but remark that the actual position of the Governor is overwhelmingly important, that the Constitution empowers him with certain special powers, and that his previous consent is necessary to the introduction of certain kinds of Bills in the Legislature, that his assent is required to all the Bills passed by the Legislature as also he can reserve any Bill for the signification of the pleasure of the Governor General or of the King Emperor. Not only this, he can pass ordinances and certain Governor's Acts in addition to the power to suspend the entire Constitution when in his opinion the administration of the Province cannot be carried on in accordance with the provisions of the Act.

As regards the financial position the Governor is entitled to see that the expenditure necessary for the conduct of administration particularly in those matters in which he has special responsibilities is duly provided for.

Such is the position of the Provincial Governor under the Act of 1935. The Joint Committee which considered the Constitution in Bill form observed:

"It is clear that the successful working of responsible

* Joint Select Committee Report, Para 109

government in the provinces will be greatly influenced by the character and experience of the Provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919, and we do not think that the part which they will play in the future will be any less important or valuable." *

* Joint Select Committee Report, Para 102.

CHAPTER IX

THE PROVINCIAL MINISTRY

Its Legal Status

Section 50 of the Government of India Act, 1935, lays down —

(1) There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is, by or under this Act, required to exercise his functions or any of them in *his discretion* provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do

(2) The Governor *in his discretion* may preside at meetings of the Council of Ministers

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act *in his discretion* or exercise his individual judgment the decision of the Governor *in his discretion* shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted *in his discretion* or ought or ought not to have exercised his individual judgment

Thus we see that unlike the British Cabinet the

Council of Ministers has been given a legal status. Further Section 51 provides :—

(1) The Governor's Ministers shall be chosen and summoned by him, shall be sworn as members of Council, and shall hold office during his pleasure.

(2) A Minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a Minister.

(3) The salaries of Ministers shall be such as the Provincial Legislature may from time to time by Act determine, and until the Provincial Legislature so determine, shall be determined by the Governor: provided that the salary of a Minister shall not be varied during his term of office.

(4) The question whether any, and if so, what, advice was tendered by Ministers to the Governor shall not be enquired into by any court.

(5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of the Ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

The above Sections cover the formation, scope and functions of the Provincial Ministers. The right of choosing the Ministers, summoning them to office and dismissing them rests with the Governor for they hold office during his pleasure. Nevertheless the choice of the Governor is restricted to the members of the Provincial Legislature. A Minister must be a member of the Legislature at the time of appointment

or must become one within a period of six months. In Provinces with a Bicameral Legislature membership of either House would be sufficient and there is apparently no bar to nominated members being also appointed to the Ministry.

The Act is quite silent as to the number of Ministers in a Province. But it appears that the existing number of executive Councillors and Ministers under the Dyarchical regime shall constitute a consolidated Ministry of today.

The Instrument of Instructions further requires the Governor to select his Ministers from among the majority party in the Legislature, having due regard to the interests of the minorities. But in so acting he shall bear constantly in mind the need of fostering a sense of joint responsibility among his Ministers.

Collective Responsibility

The wording of Sub section 4 of Section 51 does not clear the position if the Ministers are to act collectively in offering advice to the Governor. The rules of business of the Government made by the Governor *in his discretion* may provide for individual consultation between the Ministers and the Governor. Again certain minor matters of administration may be left to the Ministers concerned for disposal either on his own authority or with the concurrence of the Governor.

Moreover the fact that the Governor is entitled to preside at cabinet meetings and that he is authorized by law to demand and obtain all information relating to every subject in any Department of his government

from the Ministers or from the Secretaries, places him in a supreme position and he rather than the Prime Minister is the real head of the Government.

Ministers under the new Constitution might well believe themselves to be the servants of popular mandate in the Province. But however completely they may enjoy this confidence, it would not be easy for them to carry out popular measures specially those which go counter to the settled principles of Government adopted by the British rulers of the country. There are numerous handicaps in the way of popular ministries under the new Constitution, apart from the limitation of constitutional powers in their own hands.

The Minister's own ignorance of the routine of government as also lack of experience in handling subordinates may present serious handicap in the beginning. This would particularly be the case in regard to such Ministries as are composed of Congressmen who had, since 1919, boycotted the Legislature and all constitutional methods in their battle for their freedom.

Apart from this there is a further feeling of inferiority among Indians. We have so far had unconsciously a reverential awe towards our British masters. Indian Ministers, therefore, lacking in self-confidence would find it difficult to carry the task of administration successfully.

CHAPTER X PROVINCIAL LEGISLATURE

Bicameral Legislature for some Provinces

Under the Government of India Act, 1935, the Provincial Legislatures shall consist of the King represented by the Governor and

(1) in the Provinces of Madras, ²Bombay, ³Bengal, the United Provinces, Bihar and Assam two Chambers, and

(2) in other Provinces, one Chamber.

Where there are two Chambers, they shall be known as the Legislative Council and the Legislative Assembly respectively, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

The Second Chamber has been created to provide a check on hasty and rash legislation and to secure the representation of the vested interests. The Second Chambers in these provinces have been set up much against the will of the people.

The White Paper proposed Second Chambers for Bengal, United Provinces and Bihar only. The Joint Committee recommended the creation of Second Chambers for Bombay and Madras, and Assam was

added to the list by Parliament According to the White Paper proposals, after a period of ten years, a bicameral legislature might abolish its Legislative Council and a Unicameral Legislature might present an address to the Crown for the establishment of a Legislative Council The Joint Committee, on the other hand, recommended that the Provincial Legislatures need not be given the power of abolition or creation of a Legislative Council but shall have a special right to present an address to the Governor for submission to His Majesty and to Parliament

Opposition to Bicameral Legislature The House of Lords Debates

In the House of Lords Debates this opposition to the creation of Second Chamber was reflected by Lords, Farrington and Strabolgi Lord Farrington, for instance, moving for Single Chambers for Provinces, urged that that would be an additional expense and as the Provincial Assemblies shall have very limited franchise also a special representation for commercial, conservative and reactionary classes, he did not find "Second Chambers can possibly be needed to curb their turbulent revolutionaryism" Lord Strabolgi submitted that in addition to the objections to putting more checks and safeguards as represented by this Second Chamber, there was the fact that India today was not in need of cautious policies but very bold policies indeed He added "The out-of-date systems of land tenure, the poverty, the terrible poverty, of the masses on the land and in the industrial cities, some of the caste customs, which literally check ordinary material progress—these

things need abolishing, and abolishing quickly, and radically and bodily " "

Sir Tej Bahadur Sapru in his Memorandum to the Joint Committee referred to the relevant portions of the Report of the Simon Commission and the Government of India's Despatch on that Report, to show that the establishment of Second Chambers was not urged by either.

LEGISLATIVE ASSEMBLIES

Composition

The Legislative Assemblies of the Provinces are composed as shown on page 136

All members of the Assembly are elected The electorate in every Province is divided into different communities and interests, in accordance with the terms of the Communal Award given by the Government on August 19, 1932 and as modified by the Poona Pact of 1932 and by the creation of the new province of Orissa.

The Legislative Councils

The Communal Award did not, however, contain proposals for the composition of the Legislative Councils in the Provinces. But their composition is based upon the same principles. Since the Legislative Councils are much smaller bodies, it has not been possible to give representation to all the interests equivalent to that in the Assembly. Consequently, provision is made in the Act to give the Governor power to fill *at his discretion* a certain number of seats by nomination.

PROVINCIAL LEGISLATIVE ASSEMBLIES

Table of Seats

Province	Total Seats	Total General seat	General seats reserved for scheduled castes	Seats for backward areas and tribes	Sikh Seats	Mohammadan Seats	Anglo Indian Seats	European Seats	Indian Christian Seats	Commerce industry mining planting	Landholders Seats	University Seats	Labour Seats	General	Sikh	Mohammadan	Anglo Indian	Indian Christian
Madras	215	146	30	1		28	2	3	8	6	6	1	6	6		1		1
Bombay	175	114	15	1		29	2	3	3	7	2	1	7	5		1		
Bengal	250	78	30			117	3	11	2	19	5	2	8	2		2		1
United Provinces	228	140	20			64	1	2	2	3	6	1	3	4		2		
Punjab	175	72	8		31	84	1	1	2	1	5	1	3	1	1	1		
Bihar	152	86	15	7		39	1	2	1	4	4	1	3	3		1		
Central Provinces and Berar	112	84	20	1		14	1	1		2	3	1	2	3				
Assam	108	47	7	9		34	1	1	1	11	2		4	1				
North West Frontier Province	50	9			3	36					2							
Orissa	60	44	6	5		4			1	1	2		1	2				
Sind	60	18				33		2		2	2		1	1		1		

PROVINCIAL LEGISLATIVE COUNCILS

Table of Seats

Province	Total of seats	Gene- ral seats	Moham- madan seats	Euro- pean seats	Indian Christian seats	Seats to be filled by the Legislative Assembly	Seats to be filled by the Governor.
Madras	Not less than 54 Not more than 56	35	7	1	3	...	Not less than 8 Not more than 10
Bombay	Not less than 29 Not more than 30	20	5	1	Not less than 3 Not more than 4
Bengal	Not less than 63 Not more than 65	10	17	3	...	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	Not less than 6 Not more than 8
Bihar	Not less than 29 Not more than 30	9	4	1	...	12	Not less than 3 Not more than 4
Assam	Not less than 21 Not more than 22	10	6	2	Not less than 3 Not more than 4

Tenure

The term for every Assembly is fixed to be five years from the date of the first meeting. There is, however, no bar to their earlier dissolution than this statutory term

Every Legislative Council shall be a permanent body not subject to dissolution, but 1/3 of its members shall retire every three years

The Act further provides that the Chamber or Chambers of each Provincial Legislature shall be summoned to meet for the first session not later than six months of the commencement of the Act and that they shall meet once every year and that 12 months shall not intervene between their last sitting in one session and the first sitting in the next session

The Governor enjoys the right of addressing the Legislature and send messages in his discretion.

Provision as to Membership

Members must be British Subjects or rulers of States or Subjects of Federated States. Every member shall have to take an oath or affirmation of loyalty or allegiance to the King before he takes his seat. A member may resign his seat. No person can be a member of both Chambers. If a person is chosen by both Chambers, he has to resign from one. No person may be a member of the Federal as well as of the Provincial Legislature. The seat of a member becomes vacant if he resigns it or becomes subject to any of the prescribed disqualifications. The disqualifications are (1) holding of any place of profit under the Crown, (2) unsoundness of mind declared by a

competent court, (3) undischarged bankruptsy, (4) conviction of offences in connection with elections, (5) conviction of offences in British India or a Federated State punishable by transportation or imprisonment of not less than two years, unless 5 years have elapsed since release and (6) failure in certain cases to return electoral expenses. A person serving a sentence of transportation or of imprisonment for a criminal offence cannot be chosen. If a disqualified person sits and votes he has to pay a penalty of Rs 500/ a day which is recoverable as a debt due to the Province.

Privileges

The Act defines the privileges of members. It is laid down that there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceeding in any court in respect of anything said or vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by Legislature of any report, paper, votes or proceedings (Section 71)

Two important restrictions, however, are placed on discussion in the Legislature. First, no discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court, of a High Court in the discharge of his duties. Secondly, if the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature would affect the discharge of his special responsibility for the

prevention of any grave menace to the peace or tranquility of the Province or any part thereof, he may *in his discretion* direct that no proceedings shall be taken in respect to the Bill (Section 86).

Till other privileges are defined by the Legislature the members are to enjoy all the privileges enjoyed by the members of the former Legislature. Every Chamber has got a right of removing or excluding persons infringing the rules or standing orders or otherwise behaving in a disorderly manner.

Allowances

Until the Provincial Legislatures fix any other scale, members of the provincial Legislative Assemblies and Councils shall be entitled to receive allowances at such rates and upon such conditions as were prevailing immediately before the commencement of provincial autonomy.

Procedure

The provincial Legislature regulates its own procedure and business. The Governor in his discretion after consultation with the Speaker makes rules regulating the procedure and the conduct of business in matters arising out of or affecting any of his special responsibilities. These rules relate to the timely completion of financial business, prohibiting the discussion of, asking questions on, any matter connected with any Indian State unless in his opinion it affects the provincial Government or of British Subjects resident in the province, rules prohibiting the discussion of questions concerning the relations of the King, the Governor-General and any foreign State or Prince and relating

to matters connected with tribal areas or excluded or partially excluded areas, the personal conduct of the ruler of any Indian State or a member of the ruling family. The Governor also makes rules for the Joint Sitting of the Chambers.

All proceedings in the Provincial Legislature are in English, but rules permit persons unacquainted with or not sufficiently acquainted with the English language, to use another language.

Legislative Procedure

Detailed provisions are incorporated in the Act regarding Legislative procedure. There are two classes of legislation (1) ordinary legislation, and (2) financial.

Bills other than financial Bills may originate in either Chamber of the Legislature of a Province which has a Legislative Council. A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chambers thereof. A Bill passed in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly. But a Bill pending or passed in the Legislative Assembly shall lapse on a dissolution of the Assembly.

A Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments as are agreed to by both Chambers. If a Bill which has been passed by the Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months

from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a Joint Sitting for the purpose of deliberating and voting of the Bill. But if it appears to the Governor that the Bill relates to Finance, or affects the discharge of any of this special responsibilities, he may summon the Chambers to meet in a Joint Sitting even earlier, *in his discretion*.

The procedure with respect to a Joint Sitting is as follows. At a Joint Sitting the President of the Legislative Council shall preside or in his absence such other person as may be determined by rules of procedure. A Bill shall be deemed to have passed at a Joint Sitting if a majority of total number of members of both Chambers present vote in its favour and the Bill thus shall be deemed to have passed both the Chambers

After the Bill has passed the Chamber or Chambers of a Legislature, it is to be presented to the Governor for assent. The Governor may assent to it or withhold his assent or reserve it for the consideration of the Governor-General and the Governor General may withhold his assent or reserve it for signification of His Majesty's pleasure. There are definite instructions issued to the Governor in the Instrument of Instructions in respect to the procedure of assenting to Bills.

Financial Procedure

The principle with regard to financial procedure followed in the Act is that no proposal for the imposition of taxation or for the appropriation of

public revenues, nor any proposal affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor. The Governor is required to lay before the Legislature, the annual financial statement of the estimated receipts and expenditure, showing separately the sums required to meet other expenditure proposed to be made from Provincial revenues. Expenditure necessary for the discharge of the Governor's special responsibilities is also distinctly stated.

The following expenditure will constitute non-votable charges upon the revenues of the Province :—

- (a) The salary and allowances of the Governor and other expenditure relating to his office for which provision is made by Order-in Council ;
- (b) The debt-charges for which the Province is liable including interest, sinking-fund charges and redemption charges, and other expenditure relating to the raising of loans and the service redemption of debt ;
- (c) The salaries and allowances of Ministers, and of the Advocate-General ;
- (d) Expenditure in respect of the salaries and allowances of Judges of any High Court ;
- (e) Expenditure connected with the administration of any areas which are for the time being excluded areas ;
- (f) Any sums required to satisfy any judgment, decree, or award of any Court or Arbitral Tribunal ;

- (g) Any other expenditure declared by the Act or any Act of the Provincial Legislature to be so charged

Expenditure not so charged is votable and shall be submitted to the Legislative Assembly in the form of demands for grants. The Assembly shall have the power to assent to or refuse to assent to any demand, or to assent to a reduced demand. No demand for a grant shall be made except on the recommendation of the Governor.

The Governor authenticates by signature a schedule of grants made, sums charged on the revenues of the Province, and also grants refused or reduced by the Assembly but included by him to enable him to discharge his special responsibility. The authenticated schedule must be presented to the Assembly, but it is open neither to discussion nor vote. It forms the authority for expenditure for the year. The Governor submits a supplementary statement for additional expenditure when necessary.

The Legislature has no initiative in the case of a Bill or amendment for imposing or increasing taxation, regulating the borrowing of money, giving a guarantee affecting financial obligation undertaken or to be undertaken by the Province or charging expenditure on Provincial revenues or increasing the amount. The Governor has the initiative in recommending such a Bill. Such a Bill cannot be introduced in the Legislative Council. No Bill if it involves expenditure may be passed by the Legislative Council without the Governor's recommendation. Special

security is provided for the expenditure on European and Anglo-Indian education.

Relation between the Provincial Executive and Legislature

We have so far reviewed the powers of the Executive and Legislature, and noted in particular the wide discretionary powers of the Governor. The Joint Committee in reviewing these powers and their effects on the broad relation between the Executive and the Legislature emphasises the vital importance of a strong Executive in India. They observe:—

“If the responsibility for government is henceforward to be borne by Indians themselves, they will do well to remember that to magnify the Legislature at the expense of the executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The function of the Executive is to govern and to administer; that of the Legislature to vote supplies, to criticize, to educate public opinion, and to legislate; and great mischief may result from attempts by the latter to invade the Executive sphere.....The United Kingdom affords a sufficient proof that a strong Executive may co exist with an Omnipotent Parliament if the necessary conditions are present”*

It is true that this tradition will take time to develop in India. Indian Ministries have not hitherto been able to rely on the support of a disciplined party. The Statutory Commission observed that Governors in choosing Ministers have had an exceptionally difficult task. It has been urged by the British Indian Delegation that these difficulties would tend to

* Joint Select Committee Report, Para 111.

disappear under responsible government. But it must be remembered that in two respects the difficulties of Provincial Ministers may in the future be even greater than in the past. In the first place, they will not in future be able to rely upon the official block which in the words of the Statutory Commission "has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious." In the second place, each Ministry may be a composite one. The Legislatures will be based on a system of communal representation, and the Governor will be directed under the terms of his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities. A ministry thus formed must tend to be the representative, not as in the United Kingdom, of a single majority party or even of a coalition of parties, but also of minorities as such.

It is unfortunately impossible to provide against these dangers by any proper enactment regulating the regulations between the Ministry and the Legislature. The British India Delegates in the Joint Memorandum laid great stress upon the collective responsibility of the Provincial Ministries and they urged that the Instrument of Instructions should contain a definite direction to the Governor. The Instrument of Instruction No 7 only partially achieves this object. The Governor in making appointments to his Council of Ministers is required to select his Ministers in consultation with the person who in his judgment is likely to command a stable majority in the

Legislature, to appoint those persons (including, so far as practicable, members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But in so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers

CHAPTER XI

THE PROVINCIAL JUDICIARY

The Constitution makes provision for a federal court in the federal sphere but there is only a slight reorganisation in the judicial administration in the provinces. Section 219 of the Act provides six High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh and Judicial Commissioner's Courts in the C.P. and Berar, in N.W.F. Province and Sindh. It further provides the constitution of any court in British India which His Majesty-in-Council may declare to be High Court for the purpose of this Act.

History

British justice and courts in India date back from the time of George I in 1726. That Charter gave an appeal to His Majesty-in-Council. In the time of George III "an Act for the better administration of justice in Calcutta, Madras and Bombay" authorised the issue of Letters Patent whereby Supreme Courts were established. Then in 1861 by "an Act for establishing High Courts of Judicature in India" the Crown was empowered to establish High Courts at Calcutta, Madras and Bombay. The High Court at

Allahabad was established in 1866, at Patna in 1916 and at Lahore in 1919. The Oudh Chief Court superceded the former Judicial Commissioner's Court in 1926, and obtained substantially the same jurisdiction in Oudh as the Allahabad High Court in the Province of Agra.

Prior to the Act of 1935 all High Courts were placed under the jurisdiction of the provincial governments with one exception namely, the High Court at Calcutta under the jurisdiction of the Central Government. The Joint Committee reported in favour of placing the Calcutta High Court on the same level with other provincial High Courts and the Act of 1935 accordingly provided for it.

Before proceeding to the description of provincial judiciary a word may be said about the sphere of judicial authority. Item 53 of the Federal Legislative List includes "Jurisdiction and powers of all Courts except the Federal Court with respect to any of the methods in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers." In the Provincial List also item 1 includes "public order, the administration of justice, the constitution and organisation of all courts except the Federal Court, and fees taken therein, preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention."

The Concurrent List also contains the items of Criminal and Civil Procedure and jurisdiction and powers

of all Courts except the Federal Court with respect to any matters in that List, on which the Provincial Legislature as well as the Federal Legislature are entitled to legislate

Explaining this overlapping authority the Joint Committee* observed

We observe that the Federal Legislature is to have an exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court and the Supreme Court) with respect to the subjects on which it is exclusively competent to legislate, and that the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to legislate. It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible, but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures would have a law making power for the purpose which we have mentioned and whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High Courts. Our information is indeed that, so great is the confidence felt in the impartiality and ability of the High Courts, a converse policy is much more likely if the past is any guide, to be adopted. But, in order that the position of the High Courts, may be fully

* Joint Select Committee Report, Para 334

safeguarded, we recommend that the Governor-General and Governor should be directed in their Instruments of Instruction to reserve for the signification of His Majesty's pleasure any Bill which in their opinion would so derogate from the powers of the High Courts as to endanger the position which those Courts are under the Constitution Act clearly designed to fill. We think that it is also of great importance that the powers of the High Court referred to in the Committee's Records should be defined and confirmed by the Constitution Act, even where at present they rest on the authority of the Provincial Government. We should add that in later paragraphs we make recommendations which are designed to confirm and strengthen the arrangements existing in many Provinces whereby the High Courts are given a large measure of control over the personnel of the Subordinate Judiciary, but we also think that provisions, settling definitely the nature of the administrative superintendence to be exercised by the High Courts over the Subordinate Courts in a Province, should find a place in the new Constitution."

Appointment of Judges

Every High Court will consist of a Chief Justice and "such other Judges as His Majesty may from time to time deem it necessary to appoint" It should be noted that the existing statutory obligation to recruit 1/3 of the High Court judges from the members of the English, Scottish and Irish Bar and the other 1/3 from Members of the Indian Civil Service has been abrogated. In making this recommendation the Joint Committee* said: "We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore

*Joint Select Committee Report Para 331.

dissent from the proposed amendment of the law, but we are clear that the Indian Civil Service Judges are an important and valuable element in the Judiciary, and that their presence adds greatly to the strength of the High Courts." Though at present time the Indian Civil Service Judges are not eligible for permanent appointments as Chief Justices of a High Court, the Committee observed that "we see no reason for this invidious distinction and we think that His Majesty's freedom of choice should not thus be fettered" "We need hardly add", the Joint Committee observed further, "that our acceptance of the proposal to abrogate the statutory proportion so far as Barristers are concerned, implies no doubt as to the necessity of continuing, in the interests of the maintenance of British legal traditions, to recruit a reasonable proportion of Barristers or Advocates from the United Kingdom as Judges of the High Courts "

Every High Court Judge thus is to be appointed by His Majesty and is to hold office until he attains the age of 60 years, but he may resign his office, or he may be removed therefrom by warrant under the Royal Sign Manual on the ground of misbehaviour, or infirmary of mind or body, if the Judicial Committee of the Privy Council reports that the Judge ought to be removed from office on such reasons on a reference being made to them by His Majesty. It should, however, be noted that the practice differs from the British Constitution where the King may remove a Judge from office on an address of the Legislature. The procedure in the Dominions also varies considerably

from the proposed change in the Indian Constitution. The Canadian and Australian practice is modelled on the lines of England.

Qualifications of Judges

The qualifications for appointment as a Judge of a High Court are laid down in Section 220 (3) of the Act.

"A person shall not be qualified for appointment as a judge of the High Court unless he —

- (a) is a barrister of England or Northern Ireland, of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing, or
- (b) is a member of the Indian Civil Service of at least ten years' standing who has for at least five years served as or exercised the powers of a District Judge, or
- (c) has for at least five years held a judicial office in British India not inferior to that of a Subordinate Judge of a Small Causes Court, or
- (d) has for at least ten years been a pleader—of any High Court or of two or more such Courts in succession

Provided that a person shall not, unless he is, or when first appointed to judicial office was a Barrister, a Member of the Faculty of Advocates, or a Pleader, be qualified for appointment as Chief Justice of any High Court constituted by Letters Patent until he has served for not less than three years as a Judge of the High Court.

The presence of I C S members on the bench of the High Court has not been looked with favour by the Indian politician for these members of the Judiciary are likely to introduce an official outlook and view point in judicial decisions

Judges of the High Court are required to take the judicial oath or make an affirmation as laid out in Schedule IV of the Act Their salaries, pensions, and leave are regulated by Order in Council as in the case of Federal Judges Further Section 221 prevents any change in respect of their salary, leave or pension to their disadvantage during their term of office Vacancies pending new appointments or resumption of duties are filled temporarily by the Governor General in his discretion

Jurisdiction

The High Courts' jurisdiction is limited by the Orders in Council or by existing legislation as also the law to be administered to the High Courts, or the powers of the Judges These powers include the power to make rules of Court and to regulate the sittings of the Court as also the division of work among the several Judges

Under Section 224 every High Court is entitled to have superintending jurisdiction over all courts in India for the time being subject to its appellate jurisdiction It thus may

- ✓ (a) call for returns ,
- ✓ (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts,

- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of such courts, and
- (d) settle tables of fees to be allowed to the sheriff, attorney and all clerks and officers of courts.

"Provided that such rules and forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor "

Further under Sec 225 the High Court is empowered to transfer certain cases to itself from Subordinate Courts, if it is satisfied that these cases involve questions of validity of any Federal or Provincial Law But such transfers can only be made on an application being made in regard to Federal Acts by the Advocate General for the Federation, in regard to Provincial Acts either by the Federal Advocate General or the Provincial Advocate-General

The High Court is debarred from any jurisdiction in any matter affecting revenues or acts ordered or committed in connection with the collection of such revenues, though this practice may be amended by special legislation

In cases of death sentences in provincial courts, the Governor General is given the powers of the Governor General in Council as regards suspension or remission of sentence, and the general power of the Crown by delegation of the Governor General to grant powers is expressly re affirmed The law to be administered in the courts remains unaltered save

that King in Council may make such adaptations as may be desirable to meet the changed conditions consequent on territorial redistribution on the creation of new provinces

Subordinate Civil and Criminal Courts

The subordinate judiciary has been placed under the general control and supervision of the High Courts, though, however, appointments to it will be made by authorities in India, who will also exercise a measure of control over the judges after their appointment, so far at least as promotion and posting are concerned

The Joint Select Committee were insistent in their Report upon the necessity of securing the independence of the subordinate judiciary "It is the subordinate judiciary in India", they said, "who are brought most closely into contact with the people, and it is no less important that their independence should be placed beyond question than in the case of the superior judges" * Effect has been given to this view in Section 255 of the Act.

The service is defined as consisting exclusively of persons intended to fill civil, judicial posts inferior to that of District Judge Rules for entering thereto are to be made by the Governor after consulting the Provincial Public Service Commission and the High Court The Commission is to hold such examinations as the Governor thinks fit and to, prepare lists of qualified persons whence the Governor will make appointments based on such rules as he may lay down

*Joint Select Committee Report, Para 337

regarding the number of posts to be allotted to the several communities. The promotion, posting and grant of leave to officers shall rest with the High Court, but without the general principles affecting servants of the Crown as provided in the Act and mentioned above.

It was apprehended that if the purity of judicial administration were to be maintained it would be desirable to place the power to appoint, to promote or to transfer judicial officers in some authority other than the Ministers. The Joint Select Committee in considering this question said —

"A strict rule ought in our opinion to be adopted, and enforced, though it would be clearly out of place in the constitution Act itself, that recommendations from or attempts to exercise influence, by members of the Legislature in the appointment or promotion of any member of the subordinate judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be. We would admit no exception to this rule, which has for many years past been accepted without question in the Civil Service of the United Kingdom. We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards, but this is a matter in which the right principles ought to be laid down at the outset of the new constitutional order, and the observations which we have thought it our duty to make may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own."*

Consequently in the case of subordinate judges and munsifs it was recommended that appointments may be made after consultation with the Public Service

* Joint Select Committee Report, Para 338

Commission and in accordance with rules made after consulting the High Court as regards the standards of qualifications expected of candidates seeking such judicial appointments. The Public Service Commission of course would act in an advisory capacity only, but no Minister would dare reject their advice or recommend an appointment without it. The Joint Committee further laid down —

“We think it of first importance that promotions from grade to grade or from the rank of Munsif to that of Subordinate Judge, and also the leave and postings of Munsiffs and Subordinate Judges should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected.”*

District Judges

As regards District Judges, the expression is defined as including additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of Small Cause Court, Chief Presidency Magistrates, Session Judge, Additional Session Judge and Asstt Session Judge

In the case of all these officers the appointment, posting and promotion are to be made by the Governor exercising his individual judgment. The High Court, however, is to be consulted before a recommendation as to the making of such an appointment is submitted to the Governor

Criminal Courts and Judiciary

As regards the judiciary in the Criminal Courts,

*Joint Select Committee Report, Para 339

the ladder begins with the Honorary Magistrates or Justices of the Peace who dispose of petty cases. For more important cases, there are the District Magistrates and Sub-Deputy Magistrates and Tahsildars, not to mention the Presidency Magistrates in the Presidency towns of Calcutta, Madras and Bombay. These have varying jurisdiction to try and dispose of particular categories of cases, as laid down in the appropriate code.

Candidates for the first appointment to these posts will be selected by the Public Service Commission, and the appointment would be made by the Governor on the recommendation of the Minister from amongst candidates so selected. As for subsequent promotions or postings, the District Magistrate may make recommendation to the Minister, and these recommendations will not be disregarded.

Rule of Law and the Indian Judiciary

Despite the invariable tendency of Government under Indian conditions, having regard to the origin of British power, to be dictatorial, the courts have definitely asserted their control over the executive, though it must be remembered that control merely means assertion of legal rights. A statutory exception, of course, existed under the Government of India Act which prevented a High Court in its original jurisdiction refusing to accept a written order of the Governor General in Council as justification of any act done against any person except a European British subject but this limited exclusion disappears in the new Act. In Ameer Khan's case in 1870 the right to investigate the case

of arrest under order of the Governor General in Council was denied on the score that it was an act of State

Officers of the Government, therefore, are unable to excuse action which is contrary to law by any appeal to the orders of superiors, save in so far as by existing status and the new Act the heads of Government are exempt from the jurisdiction of Indian Courts. The liability is personal, the Secretary of State in Council is never held liable for negligence of Police Officials or their trespasses. No claim can be sustained if a man be arrested and convicted for embezzlement, for such action is a matter of judicial procedure. Where, however, an official may be liable, he is afforded a considerable measure of protection by statute for acts done in good faith, and no gazetted officer can be proceeded against without the sanction of the relevant Government, an important immunity preserved in the Act of 1935.

In matters of contract officers who contract are not liable, since they are acting on behalf of the Government, not for themselves. In India direct suit lies against the Secretary of State-in-Council in the Courts and will continue to lie against the Government concerned and in certain cases the Secretary of State may be sued in England. Such cases include contracts dealing with land, for though the title to land may rest on Sovereignty, that does not affect the attitude of the Crown in contracting in regard to it. An action may also be brought to recover sums which have reached the hands of the government because improperly levied by a collector of revenue.

Apart from these cases, the action of the courts is excluded in respect of those state proceedings which are technically called Acts of State, matters arising out of political relations with foreign States, such as treaties or annexations. In 1793 the case of the Nawab of Carnatic vs East India Company established that no English Court would deal with a claim based not on a business contract but on a treaty with a Sovereign State, which fell outside Municipal jurisdiction. It has equally been held that there is no jurisdiction in respect of claims against the Crown as the successor to a State annexed or on the score of the annexation. When the Punjab was annexed the promise of a pension by the Company to the deposed ruler and the taking possession of his property both lay outside the sphere of jurisdiction of the English Courts. On the same principle political dealings with Indian States have been held to lie outside the sphere of the Courts, and it has been ruled that the Court will not intervene against the action of the Indian Government in removing from office the Maharaja of Panna. In the same way the Privy Council has ruled that the jurisdiction exercised by political officers in Kathiawar States is political and not judicial.

Doubt still exists as to the extent to which actions of the Company can be made the subject of legal proceedings. The matter was formerly of greater importance than it now is, for it was laid down in the Secretary of State vs. Moment that Indian legislation could not override the right to sue the Secretary of State in Council in cases in which the Company was liable to suit. The matter is now, however, open

to regulation by Indian legislation

In general, the rule of law is applicable in India subject to those exceptions which have been noted above. While martial law has not seldom been applied in India in accordance with Indian practice which tends to reduce to writing all general powers action has usually been authorised by express regulations with legislative authority. Thus Bengal Regulation X of 1804 authorised the Governor General in Council to suspend the operation of the Criminal Courts and to establish martial law during the existence of open rebellion. Similar provisions existed in Madras. The proceedings taken in the rebellion in the Punjab in 1919 were based on the regulation of 1804. In *Bugga vs The King Emperor* it was held that it was perfectly legal by ordinance thus to deprive a subject of trial by the ordinary Courts. An Indemnity Act, 1919 indemnified officers Civil and Military for acts done in good faith and provided for payment of compensation for property taken by them. In 1921 an ordinance provided for the proclamation of martial law in Malabar and authorised the military commander to make regulations for the restoration of order and to establish summary Courts. In 1930 again it was necessary to provide for the exercise of martial law in Peshawar and Sholapur.

In view of terrorism it has been necessary to provide by special legislation for the grant of extraordinary powers of arrest, detention and trial to supplement the right of detention and deportation which is given by Bengal Regulation III of 1818.

This was effected by a large number of Ordinances especially from 1930 onwards directed at the non-cooperation movement. Part of the substance of these measures was enacted for three years by the Central Legislature in 1932, but in 1935 the Assembly declined to renew the measure, and it had to be certified by the Governor General. The press was dealt with by the Indian Press (Emergency Powers) Act, 931, reinforced by later legislation. The Bengal Legislature also passed several acts without certification, as the revolutionary activities of terrorists had there excited general dissatisfaction. The measures taken included extended powers of detention without trial, of summary trial, of taking possession of property of associations declared illegal etc. It was found necessary also to legislate in 1930 to defeat the attempts of those accused in the Meerut trial indefinitely to prolong the proceedings, though the measures taken to that end did not secure the result desired. It is clear that the fundamental rights of the liberty of the subject, of freedom of speech, of freedom of assembly and of the press were subjected to drastic restriction, for which the only, though sufficient, defence lies in the existence of organised terrorism which at Chittagong in 1930 (April) and 1932 (September) passed over into deliberate rebellious onslaughts on Government.*

The power of the Courts to compel the performance of executive functions is limited. By this Specific

* = the protection afforded to the Intelligence section of Police Department under this Act.

Relief Act, 1877, the High Court at Fort William, Madras, Bombay and Rangoon may require any specific act to be done or forborne by any person holding a public office where such doing or forbearing is under any law for the time being in force clearly incumbent on such person in his public character and the order is applied for by a person whose property, franchise, or personal right is in danger and no other remedy is available. The Court will not compel the performance in a particular manner of an Act left to the discretion of an officer but it may compel such discretion to be exercised fairly and in a proper manner. But no such order can be made against the Secretary of State in Council or any Local Government. This procedure takes the place of action by mandamus.

It must be noted that under the Constitution of 1919 the Courts claimed the right to make orders binding the presidents of the Legislative Councils. This view is contrary to the practice both in the United Kingdom and the Dominions and the Act of 1935 negatives the interference of the Courts.

CHAPTER XII

FRANCHISE

History of the Indian Electorate

The foundation of democratic institutions rests on Franchise. The issues involved in the creation of an electorate under the special conditions obtaining in India are extremely difficult. And to fully appreciate their bearing on India we must go to the history of Indian electorates. The system adopted under Minto-Morley Reforms hardly needs any examination here. It was only under the 1919 Reforms that the system of direct election was introduced. The reasons for the introduction of direct representation are stated in the M. C. Report.* "We consider, in the first place, that the system of indirect elections should be swept away. It is one main cause of the unreality that characterises the existing Councils, because it effectively prevents the representative from feeling that he stands in any genuine relation to the original voter."

Southborough Committee Recommendations

In accordance with the proposals of M. C. Report, a special committee (Southborough Franchise Committee) was appointed to "measure the number of

*M. C. Report, Para 226.

persons who can in different parts of the country be reasonably entrusted with the duties of citizenship" The aim no doubt was the expansion of the franchise but to keep within limits demanded by administrative difficulties The franchise under the 1919 Constitution was therefore based on (1) residence in a constituency, (2) the possession of certain property qualifications as measured by the payment of a prescribed minimum of land revenue or rent, or income tax (3) a certain form of military service to the State

Percentage of voters to total population

The total number of electors in all Provinces (including Burma) was over 7 millions—that is, about one in every nine adult males The following table shows the proportion of electors to population —

Province	Proportion of electors to population	Proportion of male electors to adult male population	Proportion of female electors to adult female population
Madras	3.2	11.6	1.0
Bombay	3.9	13.4	.8
Bengal	2.5	9.7	.3
United Provinces	3.5	12.4	.4
Punjab	3.4	11.9	.5
Bihar & Orissa	1.1	4.6	...
Assam	3.7	14.2	.2
C P & Berar	1.3	5.2	...
Burma	17.4	60.3	4.6

The electorate was undoubtedly small but it should be realised that the task for the new Constitution was to call into being an electorate which hitherto was non-existent. We should have no quarrel with the size of the electorate at this stage, though we shall refer to one feature a little later to which serious objection has been taken by every Nationalist Indian.

Use of the vote

Here it may also be worth noting the use of the vote made by the enfranchised population. It must not be supposed that the Indian voter was indifferent to his privileges. Whenever opportunities presented themselves, he readily came forward to use them but much depended on an effective organisation for rousing the enthusiasm in the election. The first election was held in 1920, when the Congress took no part and left the electoral field to the Liberals, who were handicapped by their want of organisation. But the increase in the percentages of votes polled in the next two elections was remarkable and that was largely due to the Congress participation in them.

Province	Percentage of votes polled in Elections		
	1920	1923	1926
Madras	24.9	36.3	48.6
Bombay	16.2	38.4	39.0
Bengal	33.4	39.0	39.2
United Provinces	33.0	42.2	50.2
Punjab	32.0	49.3	52.4
Bihar & Orissa	41.0	52.0	61.0
Central Provinces	22.5	57.7	61.9
Assam	16.4	37.5	35.0

Lothian Committee - Recommendations

When the Government of India Act of 1935 was being framed, the question of franchise was given a consideration by a special Committee of 18 members presided over by Marquess of Lothian. The terms of the Committee were to devise a detailed scheme of franchise and constituencies for the Central and Provincial Legislatures. There can be no doubt as to the labours of the Committee as it produced its report in five volumes. The main recommendations of the Committee were —

- (1) Complete adult franchise, as demanded by the Congress, was administratively impracticable and "politically unwise" under the existing circumstances. The fact of illiteracy among the mass of population was an important consideration.
- (2) The extension of the existing franchise by lowering property qualifications and supplementing it by an educational qualification. The existing military qualification was to be retained and extended to those enrolled in the Auxiliary and Territorial forces.
- (3) Wives of male voters who possessed a property qualification, members of special constituencies for Labour and Depressed classes, and all income tax payers should be enfranchised.
- (4) Special seats allotted at present to Commerce, Industry, Landholders and Universities should be retained without increasing their number.

According to the estimate based on the Committee's proposals, the electorate would increase from about 7 millions to 36 millions. That is about 14 % of the total population and an increase of about 500 % over the existing electorate.

Franchise Qualifications for the Federal Legislature

The franchise qualifications for the Federal and Provincial Legislatures are dealt with in the Sixth Schedule to the Act.

The qualifications for representatives of British India are different from those of representatives of Indian States. Moreover, as said above, the election of members from British India to the Federal Assembly will be indirect.

The general qualifications for membership of the Federal Assembly from British India are as follows — Under the First Schedule no person is qualified to be chosen as a representative for British India to fill a seat in the Federal Legislature unless he :—

- (a) is a British subject, or the ruler or a subject of an Indian State which has acceded to the federation ;
- (b) is, in the case of a seat in the Council of State, not less than 30 years of age, and, in the case of a seat in the Federal Assembly, not less than 25 years of age ,
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this part of the Schedule as may be appropriate in his case.

Provided that the ruler or a subject, of an Indian State which has not acceded to the Federation —

- (1) shall not be disqualified under sub paragraph (a) of this paragraph to fill a seat allocated to a Province he would be eligible to be elected to the Legislative Assembly of that Province, and
- (2) in such cases as may be prescribed, shall not be disqualified under the said sub paragraph (a) to fill a seat allocated to a Chief Commissioner's Province

For the Council of State the representatives of British India are to be divided into territorial constituencies and no person shall be entitled to vote at an election unless his name is entered on the electoral roll for the Council of State. For all legislatures throughout India separate electorates are provided for specified communities. The proportion of seats for each community in the Legislatures was fixed by the Communal Award published in 1932. The electoral rolls are consequently based on communities.

No Anglo Indian European or Christian shall be entitled to vote at an election to fill a general seat which may conveniently be termed as a Hindu seat in the Council of State. Persons to fill seats allotted to the Anglo Indian, European and Indian Christian communities shall be chosen by the members of electoral colleges consisting of such Anglo Indians, Europeans and Indian Christians as the case may be, as are members of the Legislative Council of any

Governor's Province, or of the Legislative Assembly of any Governor's Province. The rules regulating the conduct of elections by the European electoral college shall be such as to secure that on any occasion where more than one seat falls to be filled by the college, no two of the seats to be then filled shall be filled by persons who are normally resident in the same province. This provision guarantees separate electorates to Sikhs, Muslims, Anglo Indians, Europeans and Indian Christians.

A high property qualification will be required for the right to vote at elections to the Council of State. It has yet to be determined. Keith*, however, says that it has been decided to base that franchise on the franchise for the old Council of State, broadening it to give about 100,000 voters and bringing it into close connection with the franchise for Upper Chambers in the Provinces.

Franchise Qualifications for the Provincial Legislature

For the purpose of electing members to Provincial Legislative bodies two kinds of constituencies are formed. They are territorial constituencies for elections to General, Sikh, Muhammadan, European, Anglo Indian, Indian Christian seats and special constituencies for electing representatives of backward areas and tribes, Commerce, Industry, Mining and Planting, Landholders, Universities and Labour as shown below

* Constt Hist of India pp 357

PROVINCIAL LEGISLATURES

**Legislative Council
Constituencies****Legislative Assembly
Constituencies**

1. Territorial Constituencies for electing representatives for

- (1) General Seats
- (2) Muhammadan Seats
- (3) European Seats
- (4) Indian Christian Seats

1. Territorial Constituencies for electing representatives to fill

- (1) General Seats
 - (2) Muhammadan Seats
 - (3) European Seats
 - (4) Anglo Indian Seats
 - (5) Indian Christian Seats
2. Special Constituencies for
- (1) Backward Tribes
 - (2) Landholders
 - (3) University
 - (4) Labour

Territorial Constituencies

Territorial Constituencies are formed in a Province after excluding from it such portion thereof which His Majesty may deem unsuitable for inclusion in any constituency of any particular class. They are formed for the purpose of electing representatives to the Legislative Council or Legislative Assembly as the case may be. They are allotted a particular number of seats to be filled by election.

Special Constituencies

The Special Constituencies formed in a Province for elections to Legislative Assembly are entitled to elect a particular number of representatives allotted to them. After the formation of the territorial constituencies the total number of seats available will be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

Electoral Rolls

After the constituencies are formed, electoral rolls are prepared for each of the territorial constituencies and special constituencies. Every person whose name is entered in the electoral roll is entitled to vote. These electoral rolls are made up from time to time for all the constituencies. The next question is as to who is generally qualified to be entered in an electoral roll. In each Province special qualifications are prescribed which would entitle a person to be included in the electoral roll of a territorial constituency. Generally speaking, however, British subjects, Rulers or subjects of a Federated State or the Rulers or subjects of any other Native State, if so prescribed, and of the age of 21 years would be entitled to be included in the electoral roll of a territorial constituency. Persons who are of unsound mind cannot be included in the electoral roll. Similarly persons who have been disqualified on account of corrupt practices at elections cannot be voters and their names will be struck off from the electoral rolls. Persons undergoing a sentence of transportation or imprisonment or penal servitude cannot be included in an electoral roll.

As regards the territorial constituencies formed for communities such as Muhammadans, Europeans, Indian Christians etc., only members of each community qualified to be included in the electoral roll thereof, would be entered in the electoral roll of a constituency formed for that community.

A person can be included in the electoral roll of one constituency formed for the purpose of election to Provincial Legislature. Hence he can vote only in one territorial constituency.

Provisions similar to those above apply in the case of special constituencies.

Qualifications of Candidates to fill seats in Provincial Legislatures

As regards qualifications of candidates for Legislative Council, it is provided that

- (1) A person shall not be qualified to be chosen to fill a seat which is filled by an election in a territorial constituency unless, he is a voter in that constituency.
- (2) A person shall not be qualified to be chosen to fill a seat unless he is a voter for the Council
- (3) A person shall be qualified to be chosen to fill a seat if he is a resident in the Province and is not disqualified to hold a seat by any of the provisions of the Act.

As regards qualification of candidates for Legislative Assembly it is provided that

A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless

- (a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas, or backward tribes, by a representative of Commerce, Industry, Mining and Planting by a representative of Universities, or by a representative of Labour he possesses such qualification as may be prescribed and
- (b) in the case of any other seat he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in the Province

Electors' Qualifications for U P Assembly

Residential qualifications In order to get qualified for being an elector for the U P Legislative Assembly it is necessary that a person should be a resident in the constituency. Residence according to the Sixth Schedule to the Government of India Act referring to the United Provinces, means that he should ordinarily live in that area or maintain a dwelling house therein ready for occupation in which he occasionally dwells.

Besides the residential qualification an elector to the U P Legislative Assembly is required to possess any one of the following —

Qualifications depending on taxation

- (1) Being assessed to income tax during the previous financial year, or
- (2) Being assessed to Municipal tax on an income of not less than Rs 150/ per annum in any constituency

Qualifications dependent on property

- (1) Being the owner or tenant of a house or building in the constituency the rental value of which is not less than Rs 24/- per annum or in the case of a member of the Scheduled castes the rental value whereof is not less than Rs 12/- per annum, or
- (2) Being the owner of land in the constituency on which land revenue of not less than Rs 5/- per annum is payable, or
- (3) Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed amounts to not less than Rs. 5/- per annum, or
- (4) Being a tenant of land in the constituency in respect of which rent of not less than Rs 10/ per annum or rent in kind equivalent thereto is payable, or
- (5) Being an under proprietor in Oudh of land in the constituency in respect of which under-proprietory rent of not less than Rs 5/- per annum is payable, or
- (6) Being in the case of a constituency comprising any part of the Hill Patts of Kumaon is a resident in those Hill Patts and owner of fee simple estate in those Hill Patts or is assessed to the payment of land revenue or cesses of any amount in those Hill Patts or is a Khaikar.

Educational Qualification

Having passed the Upper Primary examination or

an examination prescribed as equivalent thereto.

Qualification by reason of service in His Majesty's forces

Being a retired, pensioned, or discharged officer, non commissioned officer or soldier of His Majesty's regular forces

Provision as to Shilpkars in the Hill Pattis of Kumaon

Being a Shilpkar resident in a village in the Hill Pattis of Kumaon and is selected and designated as their representative by the Shilpkar families of that village

Additional qualifications for women Electors for the Assembly

Besides the above, women are additionally qualified to be electors to the Assembly by possession of any of the following qualifications -

- (1) Being the pensioned widow or pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular forces, or
- (2) Being proved to be literate, or
- (3) If her husband possesses any of the following qualifications .-
 - (a) Being the owner or tenant of a house or building in the constituency the rental value whereof is not less than Rs 36/- per annum, or
 - (b) Being assessed to income tax on an income of not less than Rs 200/- per annum in the

previous year in the constituency in which no house or building tax is in force; or

- (c) Being the owner of land in the constituency in respect of which land revenue amounting to not less than Rs 25/- per annum is payable, or
- (d) Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed amounts to not less than Rs 25/- per annum, or
- (e) Being a resident of Hill Patts of Kumaon either owning a fee simple estate or is assessed to the payment of land revenue or cesses as mentioned above; or
- (f) Being a permanent tenure holder or a fixed-rate tenant as defined in the Agra Tenancy Act, 1926, or an under proprietor or occupancy tenant as defined in the Oudh Rent Act, 1885, and is liable as such to rent of not less than Rs. 25/- per annum, or
- (g) Being the holder as a tenant of land in respect of which a rent of not less than Rs. 50/- per annum or a rent in kind equivalent to not less than Rs. 50/- per annum is payable, or
- (h) Being assessed in the previous financial year to income tax, or
- (i) Being a retired, pensioned, or discharged officer, non commissioned officer, or soldier, of His Majesty's regular military forces.

Commerce and Industry Constituencies (3 Seats)

- (1) Being a qualified member of one of the

constituent bodies or is the nominee in that be-half of a firm, Hindu joint family, or Corporation which is a qualified member of one of those bodies called the constituent bodies, by having paid subscriptions which accrued due before the end of the previous financial year, and

- (2) engaged in commerce and industry and has a place of business in the province, and
- (3) in the case of an individual firm or a Hindu joint family was in any one of five financial years preceding a prescribed date assessed to income tax on an income of not less than Rs 10,000, and
- (4) in the case of a corporation has paid up capital of not less than a lakh of rupees and no person can be nominated on behalf of a firm or joint family unless he is a member, or one who is or has for six months been authorised to sign documents in its name in ordinary course of business, or of a corporation unless he is a Director, Managing Agent or Manager or Secretary thereof or a person who is or has, for at least six months authorised to sign documents in its name in the ordinary course of business

Landholders' Constituency (6 seats)

The franchise qualifications are

- (1) In the case of the British Indian Association of Oudh constituency, residence in the Province and membership of that Association,

- (2) In the case of the Agra Zamindars Association, residence in the Province, membership of the association and assessment to the payment of land revenue in respect of land in the province of an amount of not less than Rs 50,000

Labour Constituencies (3 Seats)

- (1) In the case of Trade Union constituency
- (a) Residence in the province for a period of not less than six months in the year ending on the prescribed date and
 - (b) Membership or honorary membership or being an official for at least 12 months of a constituent trade Union certified by Govern or existing for at least 2 years and registered for at least one year but not employed wholly or mainly in a clerical supervisory recruiting or administrative capacity, and in the case of an ordinary member not in arrear with his subscription thereto.
- (2) In the case of non Union Labour constituencies
- (a) Residence in the Province for a period not less than six months in the year ending on the prescribed date and
 - (b) Having worked on not less than 180 days whether successive or not in the year ending on the prescribed date at the rate not greater than Rs. 300 per month at one or more factories

University Constituency

The franchise qualifications are that a person

should have place of residence in India and is either

- (1) a member of the Court, Executive Council or Academic Council of the Allahabad or Lucknow University or of the Senate, Executive Council or Academic Board of the Agra University, or
- (2) a graduate of one of those Universities of seven years' standing and registered as such in the University register throughout the two years immediately preceding the prescribed date

Electors for the United Provinces Legislative Council

In order to entitle a person to be an elector for the U P Legislative Council, it is necessary that he should possess the following qualifications, i.e. to say,

Residential qualification

A person in order to be an elector for the Legislative Council should be a resident in the constituency in the same way as for the Legislative Assembly.

Besides the residential qualification any of the following entitle a person to be an elector:

Qualification dependent on taxation

Assessment to income tax in the previous financial year on a total income of not less than Rs 4,000

Qualification dependent on property

- (1) Ownership of land in the constituency on which land revenue of not less than Rs. 1,000 per annum is payable or Rs 100 in the

- case of residents in Hill Pattis of Kumaon or
- (2) Ownership of land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land either alone or together with any land revenue payable by him as owner of other land in the constituency amounts to not less than Rs 10 000 per annum or Rs 100 in the case of residents in Hill Pattis of Kumaon holding land therein, or
 - (3) Tenancy of land in the constituency in respect of which rent in cash or kind of not less than Rs 1 500 per annum is payable or the sum of Rs 100 in the case of residents of Hill Pattis of Kumaon holding land therein or
 - (4) Being an under proprietor of land in respect of which under proprietary rent of not less than Rs 1 000 per annum is payable

Personal qualifications

- (1) Being the holder of any title or decoration conferred by the Government not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur or
- (2) Being a civil, military or political pensioner of not less than Rs 250 per month, or
- (3) (i) Being a non official member of any legislature in British India, or

- (ii) a member of an Executive Council or a Minister in British India; or
- (iii) a Chancellor Pro-Chancellor, Vice-Chancellor, Pro-Vice-Chancellor or Fellow or, Honorary Fellow of, or a member of the Senate or Court of any University in British India; or
- (iv) Being a Judge of the Federal Court or any High Court, Chief Court or Judicial Commissioner's Court in British India; or
- (v) the Mayor or Sheriff of Madras, Bombay or Calcutta, or
- (vi) Being the non-official Chairman of a District Board constituted under the U. P. District Board Act, 1922 or of a Municipal Board under the U. P. Municipalities Act, 1916; or
- (vii) the non-official President of any Central Co-operative Societies within the meaning of Section 2 of the Co-operative Societies Act not operating outside the Province.

Additional qualifications for women electors

Besides the above women are entitled to be electors if they possess any of the following qualifications :—

- (1) Being the wife of a person assessed to income-tax in previous financial year on an income of not less than Rs. 10,000; or
- (2) Being the wife of a person owning land in the constituency in respect of which land revenue

amounting to not less than Rs 5,000 per annum is payable, or

- (3) Being the wife of a person owning land in the constituency free of land revenue if the land revenue nominally assessed amount to not less than Rs 5,000 per annum, or
- (4) Being the wife of a person holding title, order or decoration conferred by or on behalf of His Majesty not being lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur, or
- (5) Being the wife of a Civil, Military or Political pensioner drawing not less than Rs 250 per month.

Special qualifications for Scheduled caste electors

A member of the Scheduled castes is entitled to be an elector if he possesses any of the following qualifications

- (1) Being assessed to income tax on an income of not less than Rs 2,000 or
- (2) Being owner of land in the constituency in which land revenue of not less than Rs. 200 per annum is payable, or
- (3) Being the owner of land in the constituency free of land revenue if the land revenue nominally assessed on the land for determining the rates payable in respect of the land either alone or together with any land revenue payable in respect of any other land in the constituency amounts to not less than Rs 200 per annum, or

- (4) Being a tenant of land in the constituency in respect of which rent in cash or in kind of not less than Rs 500 per annum is payable, or
- (5) Being an under proprietor in Oudh of land in the constituency in respect of which rent of not less than Rs 200 per annum is payable, or
- (6) Being a holder of a title conferred on him by the Governor General of India

Communal Electorates

In our discussion on the subject of franchise we cannot overlook one fatal deficiency in the Indian Electoral system, namely, communal electorates. We shall examine the history of communal electorates at some length in the following pages.

None of the difficult problems which have attended the task of constitution building in India has proved more baffling than the adjustment of conflicting communal interests. The purpose in the following pages is to trace the history and causes of these antagonisms, to examine the communal claims, and to discuss the Award which was made by His Majesty's Government in August, 1932.

The 1931 Census showed the following distribution of population in British India (excluding Burma). The Hindus and the Muhammadans cover between themselves 95% of the total population, their number being respectively 177·2 millions (69%) and 66·5 millions (25·9%) out of the total of 255·8 millions. All other communities are numerically unimportant, the principal communities being the Sikhs 3·2 millions (1·2%),

Christians 36 millions (14 %) It must be remembered that the Hindus total includes the Depressed classes variously estimated at from 40 to 60 millions, who claim to be now treated in a separate category from Caste Hindus

History

The rise of Muslim Communalism dates back to the year 1906 It was on October 1, 1906 that a deputation of influential Muslims waited upon Lord Minto, then Viceroy, for the introduction of communal representation in the then new constitution of India Lord Minto's reply is recognised as the first official acknowledgment of the Muhammadan claim for separate electorates and is still looked upon by Muhammadans as a definite pledge The passage is important and needs to be quoted in extenso

'The pith of your address as I understand it is a claim that in any system of representation whether it affects a municipality a district board or legislative council in which it is proposed to introduce or to increase the electoral organisation the Muhammadan community should be represented as a body You point out that in many cases electoral bodies as now constituted cannot be expected to return a Muhammadan candidate and that if by chance they do so, it can only be at the sacrifice of such a candidate's views to those of a majority opposed to his own community whom he would in no way represent, and you justly claim that your position should be estimated not merely on your numerical strength but in respect to the political importance of your community and the service that it has rendered to the Empire I am entirely in accord with you Please do not misunderstand me, I make no attempt to indicate

by what means the communities can be obtained, but I am as firmly convinced as I believe you to be, that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the belief and traditions of the communities composing the population of this continent' *

Thus was the principle of communal representation accepted.

Lord Morley while accepting the principle of securing adequate Muslim representation, did not agree to the plan of separate electorates because of difficulties of organisation in provinces where the community was thinly scattered. He proposed instead a system of reservation of seats. But this was protested to by the Muhammadan Community.

Accordingly, the Act of 1909 embodied the plan of Separate Electorates for Muslims. Three points in this connection must be borne in mind. Firstly, the scheme was merely a further application of the principle of representation by classes and interests, though in a more vicious form, secondly, the political importance of the community carried greater weight than its numerical strength in fixing the extent of the representation to be granted. And thirdly, the reconstruction of the Councils was not intended as a step in the direction of the establishment of parliamentary government in India.

But it must be conceded that once the evil of communal electorates was introduced in the country,

* Buchan Lord Minto pp 244 Quoted from G. N. Singh pp 379-80

it became difficult as later history has proved beyond doubt, to remove it

The M C Report

The Montagu Chelmsford Report fully discussed the question of communal electorates. It declared that they were opposed to the teaching of history, that they perpetuated class divisions, that they stereotyped existing relations and that they constituted a very serious hindrance to the development of the self government principle." But nonetheless the joint authors felt constrained, so far as the Muhammadans were concerned to admit this system into the Constitution they were framing, and to concede a similar arrangement to the Sikhs in the Punjab. The explanation they offered was that the facts were too strong for them. The Muhammadans relied on past assurances which they regarded as vital to their interests, and which the community as a whole protested must not be withdrawn. Further, they were strengthened in their contention by reason of the agreement which had been arrived at in 1916 between Hindu and Muslim leaders and which went by the name of the Lucknow Pact. The conclusion to which the M C Report arrived was as follows: "Much as we regret the necessity, we are convinced that so far as the Muhammadans at all events are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realisation of a common citizenship." *

But the sub division of electorates did not stop at that. Special arrangements were made to secure a

*M C Report para 231

COMMUNAL COMPOSITION						
PROVINCE.	Non-Muhammadans				Percentage of Communal seats.	Voting ratio
	Percentage of Communal seats.	Percentage of total seats.	Pop. ratio ratio %	Voting ratio %		
Madras	75.0	73.3	90.0	93.0	—	2
Bombay	60.7	53.5	78.9	81.0	—	13
Bengal	50.0	47.9	40.1	53.0	—	13
United Provinces	60.7	58.6	80.4	86.0	—	3
Punjab	29.8	2.5	32.0	32.1	17.0	Nil
Bihar and Orissa	70.4	61.2	88.2	88.8	—	3
Central Provinces (including Berar)	80.0	78.0	90.4	91.6	—	Nil
Azamgarh	63.6	47.1	6.9	69.8	—	Nil

The "percentage of communal seats" is (a) or (b) by persons nominated to represent that community in the provincial Council (Depressed Classes).

The "percentage of total seats" is the ratio of the provincial Council. This figure is slightly variable quite

The "population ratio" is the ratio (in place

The "voting ratio" is the ratio of the agencies of the province

minimum of seats to other sections of the Hindu population which it was claimed might otherwise be underrepresented. Thus for example in Madras out of 65 seats for non Muhammadans 28 were reserved for non Brahmins in Bombay 7 out of 16 were reserved for Marhattas and allied castes'

Nomination was also resorted to in order to secure the representation of other interests that could not get into the Legislature on general ticket in the constituency. In some provinces Indian Christians Anglo Indians and Europeans were also provided with separate representation. The accompanying table will show the communal representation of the Provincial Legislatures under the 1919 Act.

Communal provisions in the New Constitution

When we come to the new Constitution of India (Act of 1935) we find worse things. What passed at the three Round Table Conferences and its Committees is a familiar enough tale. One of the most important Committees of the R T C was the Minority Sub Committee, which laboured most but produced nothing. The proceedings of that Committee are a shameful record for every Indian and the less talked of, the better. Indian communalists fought a battle royal on the foreign soil, unmindful of the fact that they were making India's claim for self government too remote in the eyes of their British masters. And of course the expected happened. His Majesty's Government gave their decision upon the communal question, which they reluctantly undertook to consider after the Indian politicians had given it up in despair. During

the Second Round Table Conference, the Prime Minister, Rt. Honble Mr Ramsay Macdonald, appointed an informal Conciliation Committee under the chairmanship of Mahatma Gandhi. The Mahatma, after a week's strenuous effort to reach a settlement, announced "with deep sorrow and deeper humiliation, his failure to secure an agreement with the communities concerned", and suggested that this "signal wrangle" would continue so long as there remained uncertainties in regard to "the fundamentals of the Constitution." He said

"The solution can be the crown of the Swaraj Constitution not its foundation, if only because our differences have hardened—if they have not arisen, by *reason of the foreign domination—I have not a shadow of doubt that the iceberg of communal differences will melt under the warmth of the sun of freedom*"

The Communal Award

The Communal Award* of His Majesty's Government of August 17, 1932, came as the solution of India's communal trouble, though not without bitterness. The Award created twelve separate electoral compartments, namely, (1) Hindus, (2) Muslims, (3) Sikhs, (4) Anglo Indians, (5) Britishers, (6) Depressed Classes, (7) Indian Christians, (8) Commerce and Industry, (9) Landlords and Capitalists, (10) Labour, (11) University and (12) Women. It devised ingenious scheme for weightage and preferential representation in order to placate the various communalist groups. At best, it could be described as a provisional patch-work of compromises

* Vide Appendix VI.

between the rival claims of the Minorities. The Award provided for the distribution of seats in the Provincial Legislatures as follows :—

General (mainly Hindus) 705, Muslim 489, Depressed Classes 61, Commerce and Industry 54, Labour 38, Landholders 35, Sikhs 35, Europeans 25, Indian Christians 21, Backward Areas 20, Anglo Indians 12, and, Universities 8

The Award was greeted with scorn and abuse from the Congress party. Mahatma Gandhi who was in prison at the time decided to fast unto death if the British Government did not withdraw their scheme of communal electorates for the Depressed Classes, which he considered was disrupting the Hindu Society.

Protest was also made by other communities. The Sikhs warned the British Government of the consequences of a 'betrayal of Sikhs' in the Communal Award. The Nationalist Muslim organisations also recorded their disapproval. The All-India Women's Conference expressed that the Award was an attempt to inject the "poison of communalism into the Indian body politic." The Hindu Mahasabha denounced the Award as partial to the Muslims.

The Poona Pact

But the most serious question that the Hindu community faced was the determination of Mahatma Gandhi to fast unto death. Therefore, the Caste-Hindus hurried to Poona to save his life by suggesting a modification of the Award. After many interviews it was agreed that 148 seats in the Provincial Legislatures should be allotted to the Depressed Classes

(cf with 71 seats under the Communal Award), that 18% of the seats in the Central Legislature to be allotted to the General electorate should be reserved for them that the voting in the joint electorates should be preceded by a primary election for a panel of four seats representatives of the Depressed classes for each reserved seat, that the system of reserved seats and primary election should be terminated after ten years. The terms known as the Poona Pact* were accepted by his Majesty's Government and Mahatma broke his fast.

CHAPTER XIII

LOCAL SELF GOVERNMENT

Historical

'Local Self Government in India in the sense of representative organization, responsible to a body of electors, enjoying wide powers of administration and taxation, and function both as a school for training, in responsibility and a vital link in the chain of organism that make up the Government of the country, is a British creation. The ancient village communities were constituted on a narrow basis of hereditary privilege or caste, closely restricted in the scope of their duties—collection of revenue and protection of life and property—were their main functions—and were neither conscious instruments of political education nor important parts of the administrative system.'*

The earliest steps towards the introduction of Municipal government in India were taken in the last quarter of the 17th century, when in 1687 the Court of Directors ordered that a corporation of European and Indian members for purposes of local taxation should be formed in Madras. A Charter of 1726 superseded the corporation by a Mayor's court—a judicial rather than an administrative body. When the Regulating Act of 1773 came into operation, the Justices of Peace whom the Governor General in Council was empowered to

* Indian Statutory Commission, Vol. V.

appoint for the Presidency towns from among covenanted civilians and other British inhabitants were in turn invested with authority to provide for the sanitation and protection of Madras, Bombay and Calcutta. It was however, not until 1845 that the elective principle was introduced in these local bodies. But between 1856-58 the elective principle suffered a set back. Acts were passed which permitted the appointment of salaried members to look after municipal functions, except in Bombay where the Justices of Peace retained the right to elect representatives, though the number was reduced from five to two.

Local Self Government and Lord Mayo

The first substantial step towards the establishment of Municipal Government in the Presidency towns on an election basis was taken by Lord Mayo's Government. By a resolution dated the 14th December, 1870 the Government of India made over to local Governments certain departments of administration, chief of them being education, medical services and roads. One great object of this decision was to afford opportunity for the development of self Government and for the association of Indians in the administration of their own affairs. The resolution encouraged the general application of the principle of elections, with the above object of developing self Government. The result was considerable legislative activity, and the constitution of Municipal bodies in urban areas with well marked fields of activity. In rural areas, however little or nothing was done beyond the occasional establishment of local funds for local improvements, sometimes controlled by nominated committees.

Local Self-Government and Lord Ripon

Of far more importance from the point of view of the development of self-government was the resolution of Lord Ripon on local self-Government in 1882. On the 18th of May, 1882, Lord Ripon's Government issued their historic resolution on local self-government. The mechanical object of the policy enumerated in the resolution was twofold, and in the first place, it was desired that the local Governments should apply to their financial relations with the local Bodies under them. The principle of financial decentralization, which Lord Mayo had introduced and which had worked satisfactorily between the Government of India and the Provinces. Secondly, and in addition to the financial objective, it became necessary to consider what steps were necessary to render the existing local bodies of all kinds more efficient and better suited to discharge the duties with which they were entrusted. But the main objective was to make local self-government "an instrument of political and popular education." With a view to that, three broad principles were outlined for the guidance of provincial governments:—

- (a) That they should maintain and extend throughout the country a network of institutions of local Government, specially in rural areas;
- (b) That they should introduce into these bodies a large preponderance of nonofficial members, the number of official members being not more than one third of the whole; and

- (c) That they should exercise control over these bodies from without and not from within, that is, they should revise and check their acts rather than dictate to them. The wish was accordingly expressed that, wherever practicable, these bodies should have non official Chairmen.

The practical changes which this far reaching pronouncement inaugurated may be briefly referred to. The result was a series of provincial Acts, providing for the election of members of Municipal bodies to the number of half or more in each case and for the grant to them of the privilege, in many cases, of electing their Chairman or vice Chairman. The impetus given to local self government in rural areas was in view of their previous neglect, even more pronounced.

In 1907-9 the subject of local self government was considered by the Royal Commission on Decentralization. The Commission made a number of detailed proposals to enlarge powers of local bodies and make them more democratic. But the pronouncement of the Government of India embodied in a resolution issued by them in 1915 on these recommendations, though favouring a general policy of further progress left to local governments the decision as to its pace.

Resolution of 16th May, 1918

The next step forward was the direct outcome of the declaration of the 20th August, 1917, regarding the future policy of constitutional advance in British India. In commenting on this pronouncement, Lord Chelmsford, the then Viceroy, stated that the first road along

which advance could be made towards, "the progressive realisation of responsible Government in India" was in the domain of local self-government. The Montagu Chelmsford Report stated the proposition as follows :-

"There should be, as far as possible complete popular control in local bodies and the largest possible independence for them of outside control."

Based on this the Government of India issued on the 16th May, 1918, an elaborate resolution enunciating the following principles

- (1) That in both Municipalities and Rural Boards, a substantial elective majority should be secured.
- (2) That the representation of official experience should be secured by the nomination of experts for purposes of discussion and advice only and without the right of voting.
- (3) That special representation of minorities, where this was necessary, should be secured by nomination rather than by a system of communal or proportional voting.
- (4) That the franchise for election to the local bodies should be sufficiently low to obtain constituencies which will be really representative of the rate payers
- (5) That there should be general replacement of nominated official Chairmen of municipalities by elected non officials, and that for rural boards also, the election of non official Chairmen should be encouraged wherever possible. Where nomination was necessary, endeavour

should be made to nominate non official Chairmen

- (6) That Boards both Municipal and Rural, with substantial elected majorities should have full liberty to impose or alter taxation within the limits laid down by the Municipal Laws the sanction of outside authority should be required to increase their existing tax Boards which were indebted to Government should not be allowed to reduce a tax without the sanction of the Government
- (7) That local bodies should submit to such general principles as Government may prescribe have full control of any funds that they themselves may raise for any particular object
- (8) That subject to the requirement of maintaining a minimum standing balance to be prescribed by the Government, local bodies should have a free hand with regard to their budgets.
- (9) That the system of requiring local bodies to devote fixed portions of their revenues to particular object should be done away with But, if Government gave a grant for a particular object, the grant must be applied to that object
- (10) That an advance should be made towards the emancipation of boards from the restriction to seek outside sanction for public works expected to cost more than a certain amount.

- (11) That, except with regard to the appointment, removal and condition of service of the principal executive or of expert officers, outside control over the establishment of local bodies should be eliminated, Government only prescribing general rules in respect of such matters as leave allowances, maximum salaries, pensions, or provident funds.

These principles aimed at a thorough democratisation of the electorates and the composition of local bodies and at as complete a measure of emancipation from outside control as local circumstances and considerations of prudence seemed to warrant.

Result of 1918 Resolution

The result of 1918 resolution was fresh legislation to give effect to the principle enunciated in that document. In the major presidencies some or all of it was passed before the introduction of the reforms. Madras, for instance, passed four Acts, that is, the Madras City Municipal Act, in 1919, and the District Municipalities Act, the local Boards Act, and the Village Panchayats Act in 1920. Bombay also passed an Act in 1920 to constitute or increase the powers of village communities. Bengal adopted a Village Self-Government Act in 1919 by which Union Boards comprising groups of villages throughout the Presidency were to be constituted at the earliest possible date.

The Act of 1919 promulgated certain rules to give effect to the 1918 resolution. Under rule sixth of the Devolution Rules framed under Section 45 A of the Government of India Act, local self-government was

classified as a provincial transferred subject. From 1921, therefore, the practical application of policy and principles formulated in the resolution of May 1918 fell to Ministers. The power was fully exercised as evident by a series of laws, relating to local self-government, passed by Provincial Legislatures, between 1921-26. In December 1922 the Bombay Legislative Council passed a Bill to amend the various Acts relating to local or rural Boards. This measure extended the franchise, removed the sex disqualifications and gave increased powers to local boards. The Act of 1925 relating to city municipalities raised the proportion of elected members to four fifth of the total number, gave to women the franchise and the right to stand for election and made special provision for the representation of the Depressed classes. In Bengal, the Calcutta Municipal Act was passed in 1923. It established single voting, provided separate electorate for Muhammadans and removed the sex disqualification. The constitution of the corporation was also democratized, the office of both Mayor and Chief Executive Officer being made elective. In the U. P. a Municipalities Act had already been passed in 1916, the provisions of which were subsequently liberalized by a series of amending Acts. In November, 1922 the same Legislative Council passed an Act relating to District Board which reduced the franchise, gave Muslims a separate electorate, completely de officialized the boards and conferred on them the power to impose taxes on *circumstances* and property and to increase the local rates. The Punjab passed no less than five laws on the subject of local self-government bringing about a redistribution of seats on a communal basis.

From the above it will be observed that the principles laid down by the Government of India in 1918 have by now been introduced in the local self-government law of practically every province. The account of the existing structure of local bodies given below will show how far the elective element on these bodies has been strengthened, and to what extent control has actually been reduced. Broadly speaking, it may be said that boards, both municipal and rural, are now predominantly non official in all Governor's Provinces. Still it cannot be denied that the control exercised by provincial Governments over these is great and *meddlesome*.

STRUCTURE

A. Municipalities The Three Corporations

The unit of urban local self government in India is the Municipality. The Corporations of Calcutta, Bombay, and Madras have each been constituted under a separate statute and enjoy specific powers and privileges. The counsellors who vary in number from 106 in Bombay to 61 in Madras are, with the exception of a small number of government nominees, elected on a fairly wide franchise varying from ten per cent of the population in Bombay to five per cent in Madras. Representation is not only geographical but functional also. In Bombay, a novel principle has been introduced by the formation of the special electoral college, representative of Trade Unions for the purpose of returning labour representatives. In Calcutta alone communal constituencies for Muhammadans have been set up. These great cities enjoy considerable freedom in the administration of their municipal affairs,

although certain powers of control in relation to appointments, contracts, raising of loans, and audit of accounts etc., are reserved to the Provincial Governments. Calcutta has an income of over two crores and Bombay over three crores of rupees. In Calcutta the Corporation elects its own Mayor and its Chief Executive Officer; while in Madras the latter is appointed by Provincial Governments. In Bombay a convention has been established whereby the President is elected in turn from the Hindu, the Muslim, the European and Parsee community.

Other Municipalities

Besides the three corporations of Calcutta, Bombay and Madras there are seven hundred and forty-nine other Municipalities in India. Since the Reforms, all the Municipalities have a majority of elected members varying from four-fifth in Bihar and Orissa to two-thirds in Bengal. The qualifications for a Municipal vote have been lowered in every province, and today about 14 per cent of the urban population enjoy the Municipal franchise. In 1925-26 six hundred and eighty-one Municipal Bodies elected their own Chairmen. The interest taken in Municipal elections varies from Province to Province. It is the greatest in the Madras Presidency, where in 1925-26 over 70 per cent of the voters went to the poll.

The functions entrusted to the Municipal bodies in India are similar to those exercised in England. They comprise the administration of education (Primary education mainly), public health and sanitation, medical relief, and public works including roads and bridges.

In order to carry out their duties efficiently the local boards need money. The chief source of their income is taxation. Local bodies generally levy taxes on property which includes land as distinguished from person of the tax payer. Certain boards derive profit from enterprising undertakings on commercial lines, such as dairies, tramways, electric supply. These serve the double purpose of helping the citizen and being a source of income to the Board. Another source of income is the rent and income from property, boards have acquired. In addition to these the boards have acquired occasionally certain subventions from the government for specified purposes. Taxes of the Board include octroi, taxes on houses and lands, on professions and trades, tolls on roads and ferries, water rate, lighting, conservancy rates. Other income is made of such items as that received as license fees from sale of drugs, rent of land and houses, fees from educational institutions and fines.

The Board fulfils certain obligations on its part for the money thus received. Expenditure on certain items is essential and if there is no corresponding income, means have to be devised for raising the income even if it be by raising loans. For instance, there are floods which could not be foreseen. Again the expenditure is either recurring or non-recurring. Expenditure which takes place every year in the usual course is recurring and is met from ordinary receipts while non-recurring expenditure is met from capital receipts. The items of expenditure by a local board include Establishment, Water Works, Education, Public Health, Conservancy,

Roads, Public Lighting, Drainage and Sewage, Fire Brigades, Buildings and other measures for public safety, Gardens and open spaces.

Earlier in the chapter we have mentioned that *local bodies in India are still very far from being fully autonomous institutions*. No doubt, in every modern State in Europe and America the central government retains to itself powers of control and supervision over *local bodies for the purpose of uniformity of administration or political needs*. But in India, this control is more extensive and pronounced than the actual needs of the central government or of local governments warrant. This is explained partly by the fact that *local self-government in India is still in the process of growth and is partly the result of a certain amount of distrust on the part of the central and local governments in democratic and popular institutions*. There is an additional reason. It is believed and rightly that the people in India, particularly in suburban areas have not yet developed that civic sense which is necessary *for the success of self-governing institutions*. This itself is due to poverty of education, caste distinctions and communal prejudices. As *Local self-government is a provincial subject it is the local government or the commissioners of divisions on its behalf, that exercise these powers of control*.

These powers of superintendence, direction and control extend to various fields. The local government prescribes the number of elected representatives, determines the communal proportions of the elected members. It has the power to supersede the Board in certain cases and to appoint persons to carry on the

administration to remove members to approve or sanction the appointment of the Executive Officials such as secretaries executive officers medical and health officers and engineers It has the power to disallow any resolution passed by a board in certain cases It sanctions or approves the budgets of specified boards and it has the power to approve or reject taxation proposals and the like The boards have to supply any information or submit any returns of statements whenever asked to do so by the government The boards also submit annually report of their working to the government

Cantonment Boards

In urban areas where troops are stationed the municipality has no control The places are called Cantonments and are administered by elected Cantonment Boards the presidents of which are officials The final control of Cantonment administration rests with the army department of the Government of India

B Rural Authorities The District Boards

In all provinces except Assam the most important unit of self government in rural areas is the District Board, the jurisdiction of which is coterminous with the District It may be compared in composition and powers with the English County Councils though the area and population for which it is responsible are, as a rule, much larger than those of an administrative county in England The majority of members are elected on a franchise which as compared to municipal franchise is very small namely a little more than 3 2 per cent of the population In the United Provinces and Bombay communal electorates exist for Muhammadans,

elsewhere representation for minorities is secured by nomination.

Almost everywhere the chairman is now an elected person except in the Punjab, where although the option exists only two boards have exercised it—a result due in the main to a preference for the freedom from communal bias of the district officer.

The functions of the district board are much the same as those of the Municipalities, allowing of course for the differing conditions of town and country.

The powers of control and intervention by the provincial government are similar. In Madras the boards have power to construct and manage light railways, as a result of which the Tanjore Board actually operates 134 miles of railway.

The main tax in force in rural areas for the use of district boards and their subordinate units is the local rate levied on the annual value of the land and collected with the land tax. In the United Provinces the rate is $6\frac{1}{2}\%$ on estates not subject to Benares Permanent Settlement Regulations and $2\frac{1}{2}\%$ annas per acre in areas subject to that Regulation. There are other supplementary taxes, for example, taxes on circumstance and property, profession tax, and tolls on vehicles etc., besides, a large proportion of the revenue of these authorities is derived from subventions from the provincial governments. These are given not only as grants-in-aid for particular services but most frequently in the form of capital sums for the provision of works of construction.

C. Village Panchayats

The Village Panchayat or the Union Board is of

special interest and importance as being an attempt to recreate the village as a unit of self government. It has jurisdiction over a village or group of villages. Its primary function is to look after such matters, as wells and sanitation, but it is sometimes entrusted with the care of minor roads and the management of school and dispensaries. In some provinces, it has also been given power to deal with petty criminal and civil cases. It is interesting to note that a panchayat which exercises all these functions is, within its total range, dealing with both reserved and transferred subjects.

Except in the United Provinces, the members of the Panchayats are almost entirely elected. In Madras, Bombay and Assam all male adults, and in C. P. all adults, have a vote. Voting is often by show of hands.

In spite of great efforts to establish these panchayats, it has not been possible to progress very rapidly. Development is promising and has gone furthest in the U. P., Bengal & Madras. In Bengal by 1928, 2,874 union boards had been established out of a possible 5,478. In the U. P. in 1927, there were 4,594 panchayats with jurisdiction over a population of nearly $8\frac{1}{2}$ millions. Outside these three provinces the movement is still completely in its infancy. To take a typical example, in Bombay in 1925-26, the population affected by the village panchayats, was only a little over $\frac{1}{2}$ million. It is very far from certain that it will eventually be possible to create satisfactory bodies of this type over all the areas of the provinces. The following quotation from the U. P. Government Memorandum illustrates the kind of difficulty met with —

"The selection of villages in which panchayats can be established with a hope of success demands caution. The field of choice is restricted. In the first place, villages which are riven by faction must be avoided. Elsewhere men of the necessary intelligence, integrity and force of character are often absent, or if present, belong to a single caste or family with the result that a well balanced panchayat cannot be formed. Many villages are entirely apathetic, again, experience has shown that panchayats rarely flourish when overshadowed by the influence of a powerful land holder to whom the tenants have been in the habit of taking their disputes. Lastly, considerable difficulty has been experienced in the selection of suitable sarpanchas (Presidents) on whose personality the success of the panchayat almost entirely depends. In remote tracts it has not been easy to discover men of the right type for these posts who had also sufficient education and intelligence to understand the simple rules and maintain the simple registers. The increasing influence of village factions and caste and communal friction has affected the working of panchayats in some places."

With the advent of the Congress governments in the provinces the question of the reform of Local self Government is receiving their earnest attention. The United Provinces Government has already appointed a Committee of the Legislature to go into the whole question of the reform of the Local self Government in all its aspects, and legislation is awaited on the basis of its report

CHAPTER XIV

THE PERMANENT SERVICES

Origin and Nature

The term 'Civil Service', which is now applied to the general body of persons employed on non combatant work, connected with the administration of a state, was first used to designate those servants of the East India Company who were engaged in mercantile work. Employees of the Company were called its servants, and those who conducted its trade oversers were known as Civil Servants so as to designate them from those whose duties were of a naval or military character. As the character of the Company changed from a purely commercial to a purely political organisation its civil servants were transformed from traders into administrators. The term, consequently, acquired a new meaning, connoting not the status of non combatants but the work of civil administration in which its members were engaged. The Indian Civil Service is not altogether a Civil service in the English sense of the term. "Here the civil service is a body of officials largely withdrawn from the public view concentrated in Secretariats at the centre of the Government, and working for the most part immediately under ministers

The work of a Home Civil servant is specialised, but it is seldom technical ”*

The Indian Civil Service is not merely an executive agency of government, but helps to formulate and direct policy, for some of its senior members are Governors of Provinces, and are members both of executive and legislative councils. The whole of the Civil service in Britain is appointed by one authority, and all its members have the same security for their rights and the same means of redress for their grievances. Far different is the case in India.

Present Organisation

The main services in India are divided into the following categories —

- (1) The All India Services.
- (2) The Central Services.
- (3) The Provincial services (including subordinate services).

The All India Services, though they work no less than the Provincial services under the provincial Government are appointed by the Secretary of State, and he is the final authority for the maintenance of their rights. Each all India Service is a single service and its members are liable to service anywhere in India, but, unless transferred to service under the Central Government, the whole of their career lies ordinarily in the provinces to which they are assigned on their first appointment.

* Simon Commission Report, para 289

The All India Services consist of the Indian Civil Service, the Police, the Forest Service, the Service of Engineers, the Medical Service (Civil), the Educational Service, the Agricultural Service, and the Veterinary Service. Recruitment, however, by the Secretary of State, to the Building and Roads Branch of the Service of the Engineers, to the Educational Service, the Agricultural Service and the Forest Service has ceased in 1924 on the recommendation of the Lee Commission. Recruitment to the Forest Service has ceased with the inauguration of the New Constitution. The only All India Services which are now recruited by the Secretary of State are the Indian Civil Service, the Indian Police Service, and the Indian Medical Service (Civil). The composition and the total strength of these Services on January 1, 1933 were as follows

	Europeans	Indians	Total
Civil Service	819	478	1,297
Police Service	505	152	657
Forest Service	203	96	299
Service of Engineers	304	292	596
Medical Service (Civil)	200	98	298
Educational Service	96	79	175
Agricultural Service	46	30	76
Veterinary Service	20	2	22
Total	2,193	1,227	3,420

The Central Services

The Central Services are concerned with matters under the direct control of the Central Governments. Apart from the Central Secretariat the more important of these services are the Railway Service, the Indian Post and Telegraph Service and the Imperial Customs Service. Till 1937 some of these services were filled by the Secretary of State. Now all the members are appointed and controlled by the Government of India. The Anglo Indian community has furnished a large number of recruits to the Central Services, especially the Railways, the Posts and Telegraphs, the Imperial Customs Service. Recruitment is by an open competitive examination held by the Public Service Commission.

The Provincial Services

The Provincial Services constitute the middle grades of the Administration. These services cover the whole field of provincial civil administration and are almost entirely Indian in composition. Appointments to these services are made by the Provincial Governments who, broadly speaking, control their conditions of service, and show an increasing tendency to restrict their recruitment to candidates from the province. In many branches of administration, members of All India and Provincial Services work side by side though the higher posts are usually filled by the former.

3. Conditions in the various Services

An important matter which needs consideration is how far the administrative agencies of the provincial Governments should in future be services organised on

an All India basis, and how far they should be drawn from the province. This is important because there are differences in position of All India and Provincial officers which arise out of the fact that the former are appointed by the Secretary of State and the latter by the Provincial Governments. These differences were incorporated in the Government of India Act, 1919. The more important rights of the All India Service are the following* —

An All India Service officer cannot be dismissed from his service by any other authority than the Secretary of State in Council. He has a right of appeal to that body, if he is adversely dealt with in important disciplinary matters. The Governor of a province is required to examine the complaint of any such officer who thinks himself wronged by an official superior and to redress his grievance, if he thinks it equitable to do so. No order affecting his emoluments adversely, and no order of censure can be passed without the personal concurrence of the Governor, and orders for his "posting" to appointment also require the personal concurrence of the Governor. His salary and pension, and sums payable to his dependents are not subject to the vote of any Indian Legislature. Sums required to give effect to any decisions taken in his favour on appeal to a Governor, the Governor General or the Secretary of State in Council are similarly protected. Finally, in connection with the introduction of the Reforms, provision was made that members of the All India services, with a few exceptions, may be allowed

*Vide Appendix IV

to retire before they have completed the service ordinarily required for retiring pension and in this case they receive a pension proportionate to their actual service.

The Provincial service officer, on the other hand, can be dismissed by the Provincial Government, which subject to right of appeal to the Governor, controls the conditions of his service. His emoluments have to be voted year by year by the Provincial Legislature and he has no right to retire prematurely on proportionate pension.

(4) INDIANIZATION OF PUBLIC SERVICES

The Charter Act of 1833

Under the East India Company, and subsequently for a long period afterwards no Indian was eligible to the Service of the Company. It was not until the Charter Act of 1833 that even a theoretical right of Indians to take part in the administration of their country was recognised. The Charter Act of that year enacted that Indians were not to be debarred by reason only of race, religion, or colour from holding any place, office or employment under the East India Company. In pursuance of this, Lord Bentinck's Government established Colleges and Schools for the training of Indians who would be employed for the Public Service.

Queen's Proclamation and After

Not much progress was made, however, in this direction, until the Government of India passed to the British Crown and Queen Victoria in her famous Proclamation announced that it was her will that "so far

as may be, our subjects of whatever race or creed be freely and impartially admitted to office in our Service the duties of which they may be qualified by their education, ability, and integrity duly to discharge." But since the mode of recruitment was through competitive examinations which were held in England Indians found few opportunities of securing a place. Lord Lawrence's Government in 1869 introduced a system of scholarships to enable young Indians to compete in England but the scheme had to be dropped owing to its being disapproved by the Home Authorities. An Act was passed in 1870 providing for the appointment of Indians otherwise than by competitive examination. One sixths of the posts were thus reserved to be filled in this manner. Inadequate as this was even that measure was not given effect to in a just and generous spirit. During the seven years that followed sixty appointments were made under this Act. There was great agitation against the virtual exclusion of Indians from the higher public appointments.

Owing to the failure of this experiment the Government, with a view to do justice to the claims of Indians to higher appointments, appointed a Commission which submitted its report in 1887. On the advice of this Commission, the Civil Service was divided into three Branches, the Indian Civil Service, the Provincial Civil Service and the Subordinate Civil Service, the first being entirely recruited in England by competitive examinations.

Islington Commission

The Civil Service in India came under detailed review in 1912 by the Islington Commission which

submitted its report in 1915. The Commission devoted itself mainly to exploring the possibilities of employment of Indians in the superior services and to an examination of the conditions of service. Owing to the War, the consideration of its proposals was deferred. When the War was over, the reforms were being examined and a new scheme had become necessary.

M C Report on 'Services'

Mr Montagu was deeply struck with the change that general conditions and public expectations had undergone in India, and he and the Viceroy recommended that it had become absolutely necessary to go far beyond the recommendations of the Islington Commission. They suggested that Indians should be employed in large numbers in all services and proposed "to remove from the regulations the few remaining distinctions based on race and to make appointments to all branches of the public service without social discrimination." Recruitment in England, was, therefore, to be supplemented by fixing a definite percentage in India. The Indian recruitment to the ICS was to be 33% of the superior posts in the Service, increasing annually by 1½% and the whole position was to be reviewed by the Statutory Commission.

But the vested interests were not prepared to for sake their privileged position without making a volume of protest. They agitated both in India and England to maintain their position. Connected with this agitation are the episodes of 'O'Donnell Circular' and the famous 'Steel frame speech of Mr. Lloyd George,' which leaked publication through press manoeuvre.

Indian opinion once again grew agitated for the bad faith of their masters

Lee Commission (1923) Recommendations

Circumstances such as these necessitated the appointment of the Lee Commission in 1923. The terms of the Commission were to (1) examine the claims that the higher grade of the Civil Service should be Indianized as rapidly as possible to satisfy the aspirations of the Indians (2) the view that the European element in the Services must continue to be sufficiently strong in the transitional stage of India's political development (3) the demand that sufficient security of tenure and fair prospects and conditions of service must be offered as attraction to the British recruits and (4) the contention that the Civil Service should be made amenable to the control of the Legislature, particularly in view of the transfer of power to Ministers in the Provinces

The Commission reported in 1924, and, save in detail, its recommendations were accepted by the Secretary of State in Council without giving the Indian Legislature an opportunity to examine them and express its opinion on them. The following were its recommendations —

The All India Services with which the Lee Commission was primarily concerned, were

(1) Indian Civil Service	1,350
(2) Indian Police Service	732
(3) Indian Forest Service (including the Forest Engineers' Service)	417

(4) Indian Service of Engineers (comprising an Irrigation Branch and a Roads and Buildings Branch)	728
(5) Indian Educational Service	421
(6) Indian Agricultural Service	157
(7) Indian Veterinary Service	54
(8) Indian Medical Service (Civil)	420
Total .	<u>4,279</u>

Recruitment

The Commission recommended that as regards the Indian Civil Service, the Indian Police Service and the Indian Forest Service and the Service of the Engineers (Irrigation Branch), on which the public security and finance mainly depend, the Secretary of State should continue to recruit for these services and that his control with safeguards should be maintained. *These four services were the only services the recruitment to which was on an All India basis from 1924 till the introduction of the New Constitution.* The other services operated mostly in the transferred field. The Commission recommended that the control of Ministers over these services, except the Medical Service, should be made more complete by closing the recruitment on an All-India basis. The officers already in these services were free to retain their All India status and privileges, and recruits for these branches of administration would in future be appointed by the Provincial Governments and would constitute Provincial Services. This recommendation was extended to the Indian Medical Service. Each Province was to employ in its Civil Medical Department

a certain number of officers lent from the Medical Department of the Army in India, such officers receiving direct commission from the Crown.

6. Increased Rate of Indianization

In regard to the Indianization of services which were still to be recruited by the Secretary of State, the Commission recommended :

For the Indian Civil Service 20% of the superior posts should be filled by appointment of provincial service officers to "listed" posts and that the direct recruitment in the future should be Indian and European in equal numbers. On this basis it was calculated that by 1939 half the recruits to the Indian Civil Service should be Indian and half European, allowing for Indians in listed posts.

For the Indian Police Service, direct recruitment was to be in the proportion of five Europeans to three Indians, allowing for promotion from provincial services to fill 20 % of all vacancies. This would produce, it was estimated, a personnel half Indian and half European by 1949.

For the Indian Forest Service the recruitment proposed was 75% Indians and 25 % Europeans. For the Irrigation Branch of Civil Engineers, direct recruitment of Indians and Europeans in equal numbers was recommended.

Central Services

For the Central Services the recommended proportions of recruitment were :

- (1) Political Department: 25% of total officers to be recruited annually should be Indians;

- (2) Imperial Customs . not less than half should be statutory natives of India,
- (3) Superior Telegraph and Wireless Branch 25% in England and 75% in India,
- (4) State Railways recruitment in India to be increased as soon as possible up to 75%, the remaining 25% in England

Provincial Services

Recruitment for the services employed in the transferred field was handed over to the Provincial Governments, and no restriction was placed upon them as to the source of their recruitment

Increase in Emoluments and Privileges

European members of all services were permitted or privileged to remit their overseas pay at a rate of 2s to the rupee or to draw it in London in sterling at that rate. At the time the actual exchange rate was 1s. 5d. European members of the Superior Civil Services and their wives were to receive four return passages, and one single passage for each child, during the service. The family of a member of the services, who died while serving was to be repatriated at the expense of the Government. The pensions of the members of the Indian Civil Service who attained the rank of members of Executive Council or who served as Governors of Provinces were increased up to £ 1,250 and £ 1,500 per annum. Attendance by medical officers of their own race for the members of the services and their families was made available. Family pension funds on the lines of that for the Indian Civil Service were introduced in other All India services. All future

British recruits to the All India services were to be given an option, when the field of the service for which they had been recruited should be transferred, among other things, of retiring on proportionate pension, the option to be exercised within a year from the date of such a transfer.

Public Services under the New Constitution

At the time the Government of India Bill, 1935, was under consideration by the Joint Committee and by the Parliament, the question of rights and safeguards of the Public Servants attracted their attention most. Rightly or wrongly, the feeling had come to prevail in the minds of the Public Servants and their spokesmen in England that, under the new regime their rights and conditions of service as well as their emoluments might come to be affected. The Joint Committee gave a serious consideration to the problem of the public services and their future and their observations are given below —

“The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration. The system of responsible government, to be successful in practical working, requires the existence of a competent and independent civil service staffed by persons capable of giving to successive ministries advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide. The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the

community under the old order and who may not desire to serve under the new; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to cooperate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them. This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution, but, since in India the whole machinery of Government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed as a reflection either upon his neighbours' integrity or his own.*

Accordingly, the Joint Committee recommended certain safeguards for the services in India which have subsequently been incorporated in the Act. The whole of Part V of the Act, containing no less than 46 sections is devoted to the recruitment, conditions of service, and privileges of the services.

The basic constitutional provisions regarding the admission, regulation and conditions of public service are contained in sections 232-277 inclusive. Sections 232-239 deal with the Defence Services, Sections 240 to 250 with the Civil Services generally and the remainder with some special departments of the Public Services like the High Commissioner's staff, Judicial and Political officers, etc.

* Joint Select Committee Report, para 274.

(1) Defence

Besides the appointment of a Commander-in-chief of His Majesty's forces in India, the Act provides for the control of His Majesty in Council over defence appointments and the control of the Secretary of State, acting with the concurrence of his Advisers, with regard to the conditions of service. It is also provided that rights of appeal enjoyed immediately prior to the passing of the Act shall remain. Indian defence will thus continue to be under supreme control of the Secretary of State.

Defence, under the Constitution, is a "reserved" department. The Act makes no provision for the Indianization of the Army within any specified period. Sir Tej Bahadur, taking his stand on the Thomas Sub-Committee on Defence, argued that the defence of India must now devolve on Indians to an increasing extent. The Joint Committee referring to the suggestion put forward by the British Indian Memorandum regarding the Indianization of the Army within a specified period, observed that it was impossible to include in the Constitution a scheme for the complete Indianization of the Army. The Committee, however, stated that the 1931 experiment pointed out a correct way in that direction and "if the experiment succeeds, the process will be extended and developed."

Commenting on the character of the present army a writer points out.

"From the Indian point of view, the special responsibility of the Governor General in regard to Defence can only be admitted if it is in India's interest, if it is exercised only to take over the Department

of Defence, and above all, if there is provided at the same time the necessary machinery for the natural transfer of the responsibility at the end of the transitional period. The provisions in the new Constitution satisfy none of these requirements."

(2) The Civil Services

Tenure of office

Section 240 lays down that (1) all people in the Civil Service, or who hold civil posts under the Crown in India, hold office during His Majesty's pleasure. This is irrespective of the authority appointing or the place of service. The doctrine, constitutionally, interpreted, means that His Majesty's pleasure can be exercised on the advice of his Ministers. That is what a civil servant understands in England. But the Act vests so many extra ordinary powers in His Majesty's representatives in India that the constitutional doctrine mentioned above has no real significance, so far as measures of economy or Indianization in the public services in India are concerned.

(2) None of those persons can be dismissed except by the authority that appointed them.

(3) No dismissal or reduction of rank shall be effected until the person has been given an opportunity to make his defence.

Recruitment and conditions of service

Appointments to the Civil Service proper, the Indian Police Service, and the Indian Medical Service (Civil), will be made by the Secretary of State,* who is also authorised to make appointments to any other

* Section 244 of the 1935 Act

Services, established after the coming into force of the New Act, which he deems necessary to recruit suitable persons for posts in connection with the discharge of the Governor-General's discretionary authority.

To all other Services or posts appointments may be made by the Governor General for federal posts, or by the Governor for provincial posts. The conditions of service in these posts shall be regulated by rules made by the Governor General, or by the Governor as the case may be (section 241). No rule, however, which would make the conditions of service to any person already in such service disadvantageous to such persons can be made and an ample margin for appeal against any disciplinary action has been provided for the benefit of such servants. Provincial and Indian Legislatures are entitled to pass laws for the regulation of the remainder of the field of public services, but no act of any Indian Legislature can limit or abridge the power of the Governor-General or of the Governor to act with the case of any person serving in a civil capacity in India. Nor can any case be so dealt with by any authority as to prove less favourable in its effects on the public servant, than the rule or the Act ordains.

Protection of these Services

The Government of India Act, 1935, provides adequate safeguards to secure that the Services will not suffer through the constitutional changes more than is inevitable. The Act also secures more or less the existing rights for future recruitment. Elsewhere*

* Vide Appendix IV.

we have given a list of the principal existing rights of the various services Suffice it to say that these make the services impregnable to popular assaults and impervious to national sympathies

Until other provision is made under the Act of 1935 rules made under the Act of 1919 relating to civil services under the Crown in British India which were in force immediately before the introduction of provincial autonomy, will remain in force so far as consistent with the Act and shall be deemed to be rules made under the approximate provision of this Act The Act (Section 270) lays down that no civil or criminal proceedings shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date except with the consent of the Governor or the Governor General as the case may be All criminal or civil proceedings shall be dismissed unless the court is satisfied that the act complained of was not done in good faith

Central and Provincial Services

The protection of officers in the Central Service Class I Central Service Class II Railway Service Class II and Provincial Services is provided in Section 258 It says that no civil post which immediately before the introduction of provincial autonomy was a post in or a post required to be held by members of the services shall be abolished if the abolition would adversely affect any person who immediately before the Act was a member of any such service, except in

the case of a post in connection with the affairs of the Federation by the Governor General exercising his individual judgment, in the case of a service in connection with the affairs of a Province by the Governor exercising his individual judgment. Further safeguard for these services is provided by sub section (2) which lays down that no rule or order affecting adversely the the pay, allowances of pensions payable to or in respect of, a person appointed before the coming into operation of this part of the Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial Service, and no order upon a memorial submitted by any such person shall be made except.

‘ (a) in the case of a person who is serving or has served in connection with the affairs of the federation, by the Governor General exercising his individual judgment,

(b) in the case of a person who is serving or has served in connection with the affairs of a Province by the Governor of the Province exercising his individual judgment

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under the Crown in India by the Secretary of State, or the Secretary of State in Council, or is an officer in His Majesty's force, the foregoing provisions of this section shall have effect as if for the reference to the Governor General or the Governor, as the case may be, there was substituted a reference to the Secretary of State ”

Special provision is made for the Police. Section 56 of the Act provides where it is proposed that the Governor of a Province should, by virtue of any

powers vested in him, make or amend or approve the making or amending of any rules, regulations or, orders relating to any police force, whether civil or military, he is to exercise his individual judgment with respect to the proposal unless it appears to him that the proposal does not relate to or affect the organisation of that force. The internal organisation of the force would be regulated by the Inspector General of Police, and the conditions of service to the subordinate rank of the many police forces in India are to be such as may be determined by or under the Act to those forces respectively. In short, all the Acts or rules made under the various Police Acts can be changed only with the approval of the Governor.

The legal position and status of the Provincial and Central Services has been greatly improved by this Act Appointments to these services will be made in the name of the Governor General and the Governor respectively and no civil servant so appointed will be subject to dismissal except by an order of the authority so appointing

Perhaps the most important safeguard of the services is provided in Sections 12 and 52 of the Act, which make "the securing to, and to the dependents of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests", a special responsibility of the Governor General in the Federation and of the Governor in the Provinces. In acting in the discharge of their special responsibilities the Governor General or the Governor is to act "in his individual judgment,"

that is, without consulting his constitutional adviser or ministers. In such matters the only responsibility of the Governor General is towards the Secretary of State, and of the Governor towards the Governor-General.*

Provincialization of Public Services

The Lee Commission provincialized all the Imperial Services employed by the Transferred Departments on the sound principle that as they will work under ministers, the control of ministers should be established. Since under the Act of 1935, all the subjects have been transferred it was expected that all services will be provincialized, which was the logical course also. But the Indian Civil Service and Police and some others have been reserved for appointment by the Secretary of State.

Section 244 regulates appointments to the Indian Civil Service, the Indian Medical Services (civil) and the Indian Police Service by the Secretary of State. The Secretary of State is to determine the respective strengths of these services, and provision is made for appointment by the Secretary of State of persons in the Irrigation service for the purposes of securing efficiency in any Province † Recruitment by the Secretary of State for all other services will cease. Section 246 safeguards the position of officers of the Indian Medical Service while sections 247-49 codify most of the rights and privileges of these services and authorise the Secretary of State to prescribe by rules to be framed under the sections such conditions of

* Sections 14 and 54 of the 1935 Act.

† Section 245 of the 1935 Act.

service, pension, complaints and appeals as may be deemed necessary. These sections have been described by Khan as "the charter of Imperial Services in India"*.

A glance at these statutory provisions would suffice to show that all considerations of national economy and official discipline have been rigidly subordinated to the demands of security, and prospects in the Public Service to those who are already there. This position of transcendental importance is assigned to the Public Services in no other constitution. "In India" says K. T. Shah, "we cannot give our public servants a superconstitutional importance, which has been accorded to them in the new Constitution, without a grave injury to our national sovereignty. They are placed in a position in which they may, if they so choose defy with impunity the constitutional authority in the land and frustrate all its measures for the economic conduct of the country's administration." Under sections 33-4 in the federal Government and sections 78-9 in the Provincial Governments, the financial statements of the country must provide for sums charged upon the revenues of the Federation or of the Provinces as the case may be. These sums are not subject to the vote of the Legislature. All considerations of national economy and official discipline have been rigidly subordinated to the demands of security, and prospects in the Public service, to those who are already there. No reform in the services, by way of economy or retrenchment or Indianization is possible under these circumstances.

* Sir Shafaat Ahmad Khan. Indian Federation, pp 218

Public Service Commissions

The beginning in this direction was made by the Government of India Act, 1919. A Public Service Commission was set up to discharge functions "in regard to the recruitment and the control of the Public Services in India." The Lee Commission recommended its establishment immediately. Such a Commission was set up in 1925, consisting of a body of five whole-time members of the highest public standing, detached from political associations. The functions of the Commission were mainly two: to recruit members to the various services, to control their discipline and to protect their interests.

Under the Act of 1935, a Federal Public Service Commission is to be established. This will replace the Central Public Service Commission. Provision is also made for the establishment of Provincial Public Service Commissions, but two or more Provinces may agree that one Commission shall serve a group, or all the Provinces may agree to use one Commission.

The actual composition of the Federal Public Service Commission is to be determined by the Governor-General, and that of the Provincial Commissions by the Governors. Their members are appointed by the Governor-General or the Governor in their discretion. One half of the members of the Commissions must be persons who at the time of their appointments have held office for at least ten years under the Crown in India. To ensure impartiality the Chairman of the Federal Commission is debarred from further appointment in India. The Chairman of a Provincial

Commission may only act in a like capacity or as the head of the Federal Commission

The Federal and the Provincial Commissions shall conduct examinations for appointments to the Federal and Provincial Services, and if asked by two or more provinces the Federal Commission must aid in choosing of candidates with special qualifications (for a particular service) Generally these Commissions must be consulted on (1) all matters relating to methods of recruitment, (2) the principles to be followed in making appointments, promotions and transfers from one service to another and on the suitability of the candidates, (3) all disciplinary matters affecting a person serving in a civil capacity in India, and (4) claims by a civil servant for the cost incurred in litigation for acts done in discharge of his duties or for the award of a pension for injuries sustained on duty and the amount of such pensions

Women Public Servants

Another feature of the 1935 Act is the provision for women public servants Section 275 lays down that a person shall not be disqualified by sex from being appointed to any civil service of or civil post under, the Crown in India, other than such civil service or post as may be specified by any general or special order made (a) by the Governor General in the case of services and posts in connection with affairs of the Federation, (b) by the Governor of a Province in case of services or posts in connection with affairs of the Province, and (c) by the Secretary of State in relation to appointments made by him

Communal Proportion in Public Services :

A Resolution of the Government of India dated the 4th July, 1934 commonly known as "Communal Award No. 2" contains certain details regarding appointments in the services not laid down in the Act itself.

The Resolution contains special instructions as to the recruitment of Muslims, and also in certain departments regarding the employment of Anglo Indians and domiciled Europeans. Regarding other minorities it is provided to give them a reasonable degree of representation in the services. The details are as follows.—

In the Indian Civil Services and the Central and Subordinate Services, to which recruitment is made on an All India basis, 25 per cent. of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims, 8½ for other minority communities. If suitable candidates are not available from the other minority communities, the residue will be available for Muslims.

In the case of provincial services, there shall be a reservation of 25 per cent. for Muslims and 8 per cent for Anglo Indians and another 6 per cent. for other minorities. This total reservation will be obtained by fixing a percentage for each local area having regard to the population ratio of Muslims and other minority communities. Special provisions are also made regarding particular departments, for example, Post and Telegraph Department, Customs Service etc.

Conclusion

Indian public opinion has viewed the question of the Services with peculiar delicacy. Till recently, all the superior grades of the governing bureaucracy were recruited from Europeans, who were foreigner to the land, the deliberate exclusion of Indians has been felt as derogatory to their self respect and patriotism.

Insult has been added to injury by providing comprehensive statutory safeguards in the new Constitution. These safeguards are obviously contrary to the spirit of responsible Government. It is claimed that these safeguards are essential for the necessary efficiency. Yet it might be submitted that efficiency is not the only criterion of the success of a hierarchy of officials. Lord Morley had rightly said that "Our administration would be a great deal more popular if it were a trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious, but, rather mechanical, rather lifeless, perhaps rather soulless."

And yet there is another disadvantage of the system. The system is expensive, considering the 'power of the country'. Officers of the Civil Services enjoy an extravagant scale of remuneration. The salary of the Governor-General is in striking contrast to those of the President of the U. S. A. and the British Premier. The monetary drain that results from this top heavy administration is immense.

CHAPTER XV

INDIAN FINANCE

The ideal system of Federal Finance

The ideal system of federal finance would be that which effected a complete separation or division of taxable resources between the federal government and the component units, so as to make each of the parties financially independent of the other. Few federal countries in the world, however, have found themselves in such a happy position as to do this and secure at the same time enough for the needs of both the parties. The highest approximation to this ideal is made by the United States of America, but elsewhere either the federal government makes contributions to the resources of the units as in Canada, Australia etc., or vice versa as in Switzerland. A poor country like India could not be expected to do it. There is a division of financial resources made by the legislative lists appended to the Act, but in its actual operation, it is far from complete.

Division of Taxable Resources between the Federation and the Provinces

The plan usually followed in federations in the division of financial resources is to assign the indirect taxes to the federal government, and the direct taxes

to the units. The reason for this is that indirect taxes are paid by the people of the country in general irrespective of their residence, whereas the incidence of direct taxes is generally local in character. What is national or general belongs to the federation, what is local, to the units. In the light of this principle, now let us study the division of resources between the federal and the provincial governments under the New Constitution.

The federal and provincial sources of revenue are the following

A. Federal

- (1) Customs duties including export duties
- (2) Excise duties on tobacco and other goods manufactured and produced in the country except alcoholic drinks, opium, hemp and other drugs and toilette preparations containing alcohol
- (3) Corporation tax.
- (4) Salt tax
- (5) Taxes on income other than agricultural
- (6) Taxes on capital value of assets exclusive of agricultural land, of individuals and Companies
- (7) Taxes on capital of Companies
- (8) Succession duties except as to agricultural land
- (9) Stamp duties on bills of exchange, cheques, bills of lading, insurance policies, proxies, receipts and promissory notes.

- (10) Terminal taxes on goods or passengers carried by railways or air.
- (11) Tax on railway fares or freight.
- (12) Fees in respect of any matter in the federal list of legislation

B Provincial

- (1) Land revenue
- (2) Excise on alcoholic liquors, opium, hemp etc., produced in the Province and counter-vailing duties on similar articles produced in other parts of India.
- (3) Taxes on agricultural income
- (4) Taxes on land and buildings, hearths and windows
- (5) Succession duties in respect of agricultural land.
- (6) Taxes on mineral rights subject to any limitation imposed by a federal law relating to mineral development.
- (7) Capitation taxes
- (8) Taxes on professions, trades, callings, or employments
- (9) Taxes on animals or boats
- (10) Taxes on sale of goods and on advertisements.
- (11) Cesses on entry of goods for consumption in local areas
- (12) Taxes on luxuries including entertainments, amusements, betting and gambling.

- (13) Stamp duties, in respect of documents other than those assigned to federal government.
- (14) Taxes on goods or passengers carried on inland waterways.
- (15) Tolls
- (16) Fees in respect of any matters in list II.

Commenting on this division of resources Prof K T. Shah* says

"There is in this division no proper principle of scientific classification and distribution at work. Not all the direct taxes are assigned to the Provinces, nor all indirect taxes to the federation. The scheme of division is rather the outcome of historical tradition and immediate expediency than any logical principle of financing for a Federal System."

N B Some of these taxes in the provincial list are made over to the local authorities

The financial position of the Provincial Governments under this division

Besides being illogical and arbitrary the above division of financial resources is defective in this that it gives too little to the Provinces, to meet even their existing scale of expenditure, nothing to say of the development of the services under them. The Niemeyer Committee calculated the following deficits in the budgets of the various provincial governments under this scheme

Bengal	Rs	75 lakhs annually	
Bihar	"	25 "	"
C P	"	15 "	"
Assam	"	45 "	" (also 7 for Assam rifles)

* K T Shah Provincial Autonomy pp 374 foot note

N W F. Rs 110 lakhs annually.

Orissa „ 50 „ „ (plus 19 non recurring).

Sind „ 105 „ „ (plus 5 non recurring)

U P. „ 25 „ „ (for five years only)

For the present the Niemeyer Committee recommended that the central government should come to the aid of the provinces and assist them to the extent of their deficit out of its own funds. Thus U P is to get Rs. 25 lakhs per year for five years only. Bihar 25 lakhs N W F Rs 110 lakhs per year subject to enquiry and revision at the end of five years, Orissa 50 lakhs a year and 19 lakhs a year as non-recurring contribution by instalments, and Sind Rs 105 lakhs for first ten years, 80 lakhs for the next twenty years, 65 lakhs for the next five, 60 lakhs for the still next five, and subsequently Rs 50 lakhs a year till the Lyod Barrage debt is completely paid off.

The future of Provincial finance

The annual subventions enumerated above constitute thus a temporary arrangement to enable the provinces to make both the ends meet for the next few years. But what about the future? So far as the yield of provincial sources of revenue is concerned it is bound to diminish, if provincial finance ministers take the wishes of the people into consideration. Nationalist opinion demands prohibition and a substantial reduction in the land tax or rents paid by tenants. Now excise and land revenue are the two most important sources of provincial income. Of course certain new taxes like

those on agricultural income, inheritance of agricultural estates, entertainments, sale of goods etc., are likely to be imposed but their proceeds are hardly likely to make up for the deficiency caused by the dwindling of excise and land revenue. While the provincial sources of revenue are thus inelastic, their expenditure requires an enormous and steady increase specially over such services as mass education, public health and medical relief, moral development and so on. Where are the provinces to find the additional money needed for all this?

Federal contributions to the provinces

The hope of the future for the provinces lies in certain contributions and refunds that they will receive out of the federal revenues under the provisions of the Constitution

In the first place under section 137, (a) succession duties other than those on agricultural land (b) federal stamp duties, (c) terminal taxes on goods and passengers by railway and air, (d) taxes on railway fares or freights are to be levied and collected by the federation but their net proceeds will be distributed among the provinces and federated States within which they are collected, the process of distribution being determined by an Act of the federal legislature. The federal legislature may, however, add a surcharge to these duties at any time. The proceeds of such surcharge will belong to the federal government exclusively.

In the second place, under Section 138, the purely provincial proceeds of the income tax (that is

excepting any surcharges levied for exclusively federal purposes, taxes on income derived from federal securities, federal government officers' salaries, proceeds of income-tax from Chief Commissioners' provinces etc., which are not distributable and exclusively federal) will be divided among the provinces under certain conditions and upto to a certain prescribed maximum fraction based on a sliding scale.

In the last place, under Section 140, duties on salt, excise (federal), for example, on production of sugar, petroleum, matches etc.), and export duties (for example, on jute) may by a federal Act be distributed among the units of the federation to the extent of their net proceeds or a part thereof, provided that in case of jute export duty, the distributable proportion shall be less than half of the net proceeds.

Financial Position of the Federal Government

The prospects of these contributions from federal revenues to the provinces materialising in the near future depends on the satisfactory state of federal government's financial position. Now the budget estimates of 1937-8, the year in which provincial part of the Constitution began to function showed the total net revenue (at the rate of the existing taxation) to be 79.99 crores and the expenditure to be 83.41 crores. This expenditure included the subventions to the various provinces as recommended by Sir Otto Niemeyer, but it left to the Central government a deficit of 3.42 crores. This had to be met partly out of the revenue reserve (Rs. 184 lakhs)

and partly from additional taxation namely, in crease in the rate of sugar, excise, and silver duty. This shows that the federal government will be hard pressed even in meeting the demand of existing subventions to the provinces. It is extremely unlikely that it will be able to release for the provinces a share of the proceeds of income and other taxes in the near future. When the federation is established there will be the additional cost of the New Constitutional arrangements and the entry of the States will necessitate remission of cash contributions at present received from them and also certain payments to them. In view of all this it is extremely unlikely that the federal government will have any large surpluses to distribute among the provinces, unless drastic reduction is made in military expenditure and the emoluments of the higher grades of services. The earliest distribution among the provinces is likely to be that of income tax proceeds, but even in respect of that Sir Otto has recommended that for the first five years commencing from the establishment of provincial autonomy the provinces shall get nothing out of the income tax unless the railways' earnings so improve as to contribute to the general budget. At present the yield of income tax is about Rs 13 crores. Ultimately, half of it will go to the provinces. But during the first five years the share of the provinces is determined by the following formula.

Proceeds of income tax and railways' contribution to the general budget—13 crores = sum distributable among the provinces.

The provinces will get the following percentages of the sum distributed —

Madras	15	C P	5
Bombay	20	Assam	2
Bengal	20	N W. F	1
U P	15	Orissa	2
Punjab	8	Sind	2
Bihar	10		

Federal Finance and the States

As in everything else concerning the federation, so also in regard to federal finance the position of the federating States is peculiar and different from that of the British Indian Provinces. At present many of the States pay certain annual sums to the Crown by way of tribute, or contributions for military and other purposes. Some of them have ceded territory in lieu of cash payments. If and when they enter the federation, these payments will have to cease, because it is a great anomaly that the units of the same State should be under tribute to one another. On the other hand many of the States at present derive considerable revenue from sources which will become federal, and which the States on federating can no longer be allowed to tap. Such are maritime customs, post offices, currency and mints, inland transit duties along their frontiers and so on. On entering the federation, therefore the States will be relieved from certain financial obligations towards the Crown on the one hand, and will lose certain sources of revenue they enjoy at present on the other. Now a balance between their credit and debit sides of accounts in relation to

the federation must be struck, and necessary adjustments must be made

This is what will happen in case of every State when it signs its Instrument of Accession. A balance sheet for each federating State will be prepared on which its existing cash payments to the Crown or the annual value of territories ceded by it will be shown on the credit side, while the value of the financial privileges and immunities which it will surrender as a result of federating, will be shown on the debit side. If the balance is then found to be in the favour of the State payment shall be made to it within twenty years of its entry into the federation, though such payments will not commence till the provinces have begun to receive their share of the income tax proceeds. If, however, the balance is against the State in question, It will not be allowed to share in any federal distributions that may be made, till it has begun to pay up the debit balance. It will be seen that this arrangement is exceedingly favourable to the State because the debtor States are not compelled to pay up. They will only be deprived of their share in any federal contributions to the States. On the whole, the States will gain by this arrangement. It has been calculated that if all the States join the federation, a sum of rupees one crore per year will have to be remitted by the federation (Rs 63 lakhs in respect of cash contributions and Rs 37 lakhs in case of ceded territories)

That is how the initial account between the federation and states shall be made up. Now the next

question is in what ways and to what extent will the State and their subjects contribute by way of taxes to the federal fisc? The following analysis given by Prof. Shah* is illuminating.

- (a) Ordinary federal taxation to which the States will contribute in normal times: customs, export, and federal excise duties, salt, and corporation tax,
- (b) Ordinary federal taxation to which the States will not contribute: Income tax, and property taxes.
- (c) Extra ordinary revenue to which States will contribute but only in case of very special financial stringency: surcharges on income tax.
- (d) Extra-ordinary sources of federal revenue to which the States will not contribute in any case: surcharges on succession duties, terminal taxes on goods, or passengers, and federal stamp duties.
- (e) Sources of federal revenue not derived from taxation, to which the States will contribute directly or indirectly: Fees in respect of matters included in the federal list, profits of federal railways, post offices, mints, and other federal enterprises.

Summing up, we may say that the States will be exempt from income and property taxes, and surcharges on succession duties, terminal taxes on

* Federal Structure in India Pages 424—25.

goods and passengers, and stamp duties, while the provinces and their people will pay all these. The States and their subjects will, therefore, contribute less to the federal fisc than the provinces or their people. It is, however, only fair to note that the States will not, like the provinces, receive from the federal government subventions, or remissions of debt, or distribution of the proceeds of income and certain other taxes.

Borrowing powers of the federal and the provincial Governments

On the establishment of the federation, the power of the Secretary of State for India to borrow on the security of Indian revenues will cease to exist. The federal government is empowered to borrow* with such limits and conditions as may be laid down by the federal legislature by its laws. It should, however, be noted that the Governor General has a special responsibility for maintaining the financial credit and stability of the federation, and so the control of federal legislature and ministry over borrowing is not likely to be final or complete.

As for the provinces, they may borrow in the open market in or outside India or from the federal government. For borrowing outside India by a province, the consent of the federation is required. If a province is indebted to the federal government or the latter has guaranteed any outstanding debt contracted by the former, federal consent is necessary for further borrowing of any kind by the Province †

* Section 162 of the 1935 Act

† Section 163 of the 1935 Act.

The Federation may also make loans to States, or guarantee their loans subject to such conditions as it may think fit to impose *

Audit

The auditor-general for India is appointed by the Crown, and in respect of his salary, allowances and removal etc., his position is analogous to that of the Judges of the Federal Court. The federal auditor-general will also audit the accounts of the provincial governments unless the latter decide to have auditor-general of their own. The auditor-general is entitled to give directions to the accounting staff both federal and provincial regarding the methods of account keeping. He reports the results of the audit to the Governor General to be submitted by the latter to the legislature.

Criticism of the Federal Finance in India

On theoretical grounds the system of federal finance in India is open to several objections. In the first place, it violates some of the most widely accepted principles of federal finance in the division of taxable resources between the federal government and the units. Not all the direct taxes belong to the units, nor all the indirect taxes to the federal government. In the second place, there is a lack of uniformity as regards the financial privileges and obligations of the different kinds of units. As usual, the States get a more favourable treatment than the provinces. The subventions and other contributions contemplated for the provinces

* Section 164 of the 1935 Act.

also betray a lack of any governing principle or equity. Certain provinces have been put in a most favoured position for no merit of their own, while others have suffered for no fault of their own. The result has been mutual jealousy and heart burning. The United Provinces, for example, has been very inequitably treated, and the 25 lakhs a year that it has been given for five years are inadequate to meet its needs. In the third place, while the provincial expenditure will constantly be growing due to the expansion of their nation building departments, the sources of revenue at their disposal are of an inelastic nature, so that for the betterment of their standard of administration they will be dependent on the federal government and the state of its finances. This will militate against their autonomous character. Lastly, the control of federal legislature over federal expenditure is largely illusory, seeing that 80% of the total federal expenditure is non votable. Prof Shah gives the details of this expenditure for 1937-8 as follows:

Total Revenue Rs 80 crores (not net numbers)
Non votable heads of Expenditure

	Lakhs
Staff, household and allowances of Governor-General	15.54
Public Service Commission	4.95
Ecclesiastical department	27.82
Tribal Areas	192.05
External affairs	52.24
Baluchistan	64.94
Payments to the representative of the Crown	105.55

Interest on debt	1323.65
Defence	4462.00
Pensions	286.00
Grants-in-aid to provinces	316.00
Total	<u>6850 74</u>

With 80% of the federal revenues thus mortgaged there is little room for economy, or diversion of expenditure to more fruitful channels.

Nevertheless in extenuation of the defects of the financial system of federal India we may point out that the authors of it were not writing on a clean slate. They had to contend against certain undesirable legacies of the past history of Indian finance as well as the existing interests of the various contending parties. Under the circumstances, the existing scheme of federal finance in India had inevitably to be a compromise lacking in symmetry and roundedness. But in its broad outline, if not in details it represents perhaps the most practical and workable scheme that could be devised under the circumstances.

CHAPTER XVI

THE HOME GOVERNMENT

What is the Home Government ?

India being a dependency of Great Britain, the whole of her constitutional machinery is not located in this country. That part of it which lies in Great Britain and whose function is to supervise and control the Government of India is called the 'Home Government.' The Home Government consists of the following authorities (a) The Monarch, (b) The Parliament, (c) The Secretary of State for India, and (d) The advisers of the Secretary of State for India.

The Monarch

The monarch of Great Britain is the King Emperor of India. Technically he is the head of the Government of this country. All the British India territories are vested in him. He is the Lord Paramount in relation to the Indian princes. The conventions of the British Constitution, however, do not permit to the monarch the personal exercise of any powers either in relation to the government of Great Britain or India. His role, therefore, is purely one of a ceremonial head. Since the accession of King George V it has become a convention for a new monarch to visit India and be crowned in this country.

in a grand coronation durbar. The Prince of Wales and other members of the royal family visit this country from time to time in order to strengthen the bonds of personal relationship with the people. On great occasions such as the inauguration of a new constitution, opening of some important conference, or some other political happening of consequence, proclamations or messages are issued by the King. He heads the list of subscriptions raised for this country, in Britain, for benevolent purposes, for example, in connection with Bihar Earthquake Relief Fund of 1935. Such is the nature of King's functions in relation to India.

The Parliament

The British Parliament is the legal sovereign in relation to India. As will be explained later, material changes in the constitution of the country can be made by that body only. The various orders in council issued under the Government of India Act, 1935 require the consent of the Parliament for their validity. Busy with home affairs, the Parliament does not usually show much interest in Indian affairs, but since 1919 there has emerged a group of members informed on and interested in Indian events. They are noticed putting questions to the Secretary of State for India from time to time. Apart from the time, however, when constitutional changes are afoot, or some serious political movement is going on in this country, the Parliament does not trouble itself much about India. Formerly the annual budget and a moral and material progress report of the country used to be annually

laid before the Parliament, but since the passage of Government of India Act, 1935 conferring, certain degree of self-government on the people, the practice has been stopped

The Secretary of State for India

The Secretary of State for India is one of the British cabinet ministers, responsible to Parliament for Indian administration. His office was first created by the Government of India Act, 1858. The object underlying it was to create a responsible agency for the supervision and control of Government of India which itself was autocratic owing no responsibility to the people of the country. From 1858 the Secretary of State for India exercised almost unlimited power over the government of this country. All new laws, taxes, items of expenditure, and administrative measures required the previous sanction of the Secretary of State for India, so that at times, secretaries of State like Lord Morley treated the Governor-General of India as being mere agents of theirs. When a little of responsible government in the provinces was introduced under the reforms of 1919, the need was felt of relaxing the Secretary of State's control over these branches of administration which had been entrusted to the care of ministers, since the latter could not own allegiance to two masters—the people, and the Secretary of State—at the same time. No statutory restrictions on the power of Secretary of State for India were placed but it was laid down by rule, firstly, that in the transferred subjects the Secretary of State for India would not interfere except in a few

specific cases, for example, for protection of services recruited by him, and secondly, that in other subject, if the Governor and his Legislative Council, or the Governor-General and the Indian Legislative Assembly agreed in a particular matter, the Secretary of State would ordinarily allow their joint decision to prevail.

The same principle regulates the position and powers of the Secretary of State for India under the Government of India Act, 1935, also. The matters subject to control of ministers responsible to the people are not to be interfered with by the Secretary of State, but the Governors and Governor-General in so far as they act in their discretion, that is, independently of ministerial advice are subject to the control of the Secretary of State and must comply with his directions.*

The Secretary of State for India still recruits certain services for India, for example, the Indian Civil and the Police Services and has the power to protect their legitimate interests.

Upto the passage of Government of India Act 1935, the Secretary of State for India possessed a corporate character, capable of holding and disposing of property, entering into contracts, suing, and being sued. Under the present constitution, however, all property held in the name of federal and provincial governments vest in the Crown, and these governments themselves have been given a corporate character.

The Advisers of the Secretary of State

Formerly the Secretary of State for India had

*Section 314 of the 1935 Act.

a Council associated with him, which used to advise him in Indian affairs. In matters financial and relating to Indian services, the Secretary of State for India could act only with the concurrence of the majority of this council. Indian opinion had always been opposed to this body, consist as it did mostly of retired officials from India, who always looked to the past rather than the present for inspiration and guidance.

The Government of India Act, 1935, has abolished this council. Now the Secretary of State for India is to have advisers not fewer than three not more than six as he may determine from time to time. At least half of these advisers must be persons who have held office under the Crown in India at least for ten years, and have not left the country, at the time of their appointment, for more than two years* These advisers are to advise the Secretary of State "on any matter relating to India on which he may desire their advice" He may consult them individually or collectively as he pleases, and may or may not accept their advice,† except in the matter of protection of services, where he must act only with the concurrence of the majority of his advisers. The advisers hold office for five years. They cannot be reappointed and cannot sit in the Parliament ‡

* Section 278 of the 1935 Act

† Section 278 (b) of the 1935 Act.

‡ Section 261 of the 1935 Act.

Salaries of Secretary of State and his advisers and the expenses of India Office

The Secretary of State's department is known as the India office. Under the present constitution the salary of the Secretary of State, and expenses of his department are to be paid out of the British revenues and not Indian* but the Indian federal government shall annually pay to the British Exchequer an agreed sum to defray "so much of the expenses of the department of the Secretary of State and the Governor General that the department should so perform† At present the Indian contribution towards the expenses of India Office is £ 1,50,000 a year, but in future it is likely to be greatly reduced.

The High Commissioner for India

To perform certain agency functions in England on behalf of Government of India in connection with trade and commerce, purchase of stores, and similar other matters, there has been appointed a High Commissioner for India in London since the days of the Montagu Chelmsford reforms. The office has always been held by an Indian, and the High Commissioner is paid out of Indian revenues.

Conclusion

The new Constitution has considerably altered the structure of the Home Government. As a result of the constitutional changes conferring greater powers on the representatives of the people, the sphere of interference by the Secretary of State for India has

* Section 280 (1) of the 1935 Act

† Section 280 (3) of the 1935 Act.

been proportionately reduced. The powers of the Secretary of State for India are, however, still considerable, and far in excess of those belonging to his prototype for the Dominions. "On a general review of all these varied and substantial powers" says Prof. Shah, "the Secretary of State still stands out as the most dominant authority in the Indian Constitution. His powers may not be so imposing in appearance as those of the Governor General or the Provincial Governors. But these are merely his creatures, obedient to every nod from the Jupiter of Whitehall. His powers extend not merely to matters of fundamental policy, to the protection of British vested interests. They comprise even matters of routine administration, the more important doings of Indian legislature, and even the appointment, payment or superannuation of certain officers in the various Indian services or Governments. He has, in fact, all the power and authority in the governance of India, with little or none of its responsibility."*

* Federal Structure in India, page 386

CHAPTER XVII

THE AMENDMENT OF THE CONSTITUTION

Material changes in the Government of India Act, 1935, can only be made by British Parliament acting on its own initiative. But certain parts of the constitution can also be amended by orders in council approved by the two Houses of Parliament.* These parts are those relating to the size and composition of the chambers of the federal legislature, number of chambers in the provincial legislature or its size and composition, qualifications and methods of election of members of any of the legislatures, qualifications of voters etc.

These provisions may be changed either on the initiative of the Federal and provincial ministries and legislatures or on that of the British Government itself. In case of initiative from Indian Legislatures, a resolution or address recommending the change must be passed by the legislature concerned on the ministry. Except where it is sought to lower the educational qualifications for women to mere literacy and to ensure automatic registration of them, in all other cases no such resolution can be moved before the expiry of ten years since the inauguration of the

* Section 308 of the 1938 Act.

Constitution The resolution when passed will be forwarded to the Secretary of State by the Governor General or the Governor as the case may be, with their opinion and comments. Within six months of receiving it the Secretary of State will lay before the Parliament his proposal regarding what change he is willing to make. If the Houses of Parliament are agreeable and recommend so to His Majesty by an address, an order in council making the change will be issued.*

If the initiative is from the side of the Secretary of State himself, then the ten year expiry rule may be ignored. Unless the change is only verbal, Governments legislatures and ministries of India have to be consulted or if the change affects the States they will also be consulted. The rest of the procedure is the same as in the previous case. In case Parliament is not in session and there is urgency, orders in council changing the constitution may be issued without consulting the Parliament, but such orders will expire after 28 days of the reassembly of the House of Commons unless they have been approved by the Parliament meanwhile.

The existing scale and method of the representation of States and minorities is safe guarded by the provision (section 308) that the proportion of seats between British India and the States in Federal Legislature cannot be varied by this procedure and that no change affecting the Communal Award would be recommended to the Parliament except with the

* Section 309 of the 1935 Act

agreement of the communities concerned (Statement issued on July 3, 1935, by Government of India on the authority of the British Government). Apart from this the Communal Award is not statutorily protected as the representation of princes is.

CHAPTER XVIII

THE NEW CONSTITUTION AT WORK

Electorate and party groupings

The provincial part of the Constitution came into force on April 1, 1937. Elections to the provincial legislature took place in February 1937. Speculation was rife as to how the new electorate would behave. Consist as it did mainly of peasants in the rural areas, some observers were of opinion that due to their own innate conservatism and pressure of landed interest the newly enfranchised cultivators would vote for vested interest parties particularly the zamindars. The Congress also, however, had decided to enter the electoral lists, and its prospects formed the subject of political conversation for many an anxious month.

Besides the Congress which was contesting the elections in all the provinces, there were two communal parties also operating on an all India scale namely, the Hindu Mahasabha, and the Muslim League. There were parties also confined to particular provinces such as the Krishak Proja Party of Bengal, the National Agriculturist Party of U.P., the Unionist Party of the Punjab, the Democratic Swaraj Party in Bombay, and C.P., and the Justice Party of

Madras. The platform of the Congress consisted mainly of a single plank, namely, the wrecking of the new Constitution, though its election manifesto also promised ameliorative measures for the workers, peasants and the unemployed. The Hindu Mahasabha and the Muslim League parties took their stand primarily on the communal interests of the Hindus and the Muslims respectively. The non Congress parties also promised various ameliorative measures to the people, but while they expressed their dissatisfaction with the new Constitution, they were prepared to work the provincial part of it so as to extract out of it the maximum amount of good for the people, it was capable of yielding.

Election Results

The election results were a surprise in more ways than one. In the first place, there was a tremendous landslide in favour of the Congress going beyond the hopes of even the most ardent of the Congressmen. The Congress obtained absolute majorities in six out of eleven provinces, while in two of the remaining five (Bengal and Assam) it was the largest single party in the Assembly. In the second place, the communal parties both Hindu and Muslim fared rather badly. The Hindu Mahasabha failed to capture any seats in provinces other than the Punjab and Bengal, while the League candidates were defeated in most provinces by independent Muslim candidates or those standing on the ticket of other parties. Lastly, the Congress failed to capture any Muslim seats anywhere.

Formation of Provincial Ministries: Acceptance of office by the Congress in the majority provinces

When it came to the formation of ministries, the leaders of the Congress parties in the various provinces where they were in majority were instructed by the Congress Parliamentary Committee (a Sub-Committee of the Working Committee of the Congress) to demand an assurance from the Governors of their respective provinces that they would not use their special powers to thwart the 'constitutional activities' of the ministers. Under instructions from the Government of India the Governors replied that the use of their special powers in certain circumstances was a statutory obligation imposed on them by the Constitution, and they were not legally competent to agree to waive them. A big constitutional debate ensued in which the foremost official and non official legal luminaries of the country participated. Meanwhile in the Congress Provinces, following upon the refusal of the Congressmen to form ministries without the assurance, the so called 'interim ministries' headed by leaders of minority groups in the assemblies were constituted. For fear of no confidence motions, the session of assemblies in these provinces was postponed indefinitely. In the Punjab, Bengal, Assam, N. W. F. Provinces, and Sind non Congress ministries of a coalition character were formed, differing from the interim ministries in the fact that they had majorities behind them. In the Congress provinces the deadlock continued for four months. The situation could end only in one of the two possible alternatives. Either some form of assurance must come forth enabling the

Congress to form ministries, or at the end of six months the assemblies must be summoned when they would certainly pass votes of no confidence against the ministries without taking up the government themselves and thus forcing the Governors to suspend the Constitution under section 93 of the Act. Towards the end of July, 1937, the Governor General made a statement to the effect that the Government of India Act, 1935, did not contemplate an interference by the Governors in the day to day administration of the ministers, and that the Governors would certainly be guided by this principle. A meeting of the All India Congress Committee was convened at Delhi to consider this assurance. There was a sharp divergence of opinion among the members of this body as to what should be done. All of them agreed that the viceregal assurance fell short of the Congress demand. The left wingers, therefore, argued that the Congress should refrain from office acceptance, force the Governors to suspend the Constitution and thus fulfil its pledge of wrecking it. The right wingers led by Mahatma Gandhi advised otherwise. Probably besides the formal statement of the Viceroy, they had something more of a secret kind up their sleeves, because many months later in connection with the C. P. crisis Mahatma Gandhi spoke of a 'gentleman's agreement' between the Congress and the British government. Ultimately the All India Congress Committee decided upon office acceptance 'in deference to the wishes of the country,' even though the requisite assurance had not been coming forth. In the early days of August Congress ministries were formed in the six provinces of Madras,

Bombay, C. P., U. P., Bihar, and Orissa.

Programme of Congress Ministries: Release of Political Prisoners

The first task to which the Congress ministries addressed themselves was the release of political prisoners. They began by setting free those who had been convicted of non-violent offences. The left wingers, however, pressed for the release of all political prisoners of whatever type provided that they agreed to abjure violence in future. The problem was specially urgent on account of the fact that in the non-Congress province of Bengal there were a large number of detainees detained in camps on suspicion without trial, and also a large number of other political prisoners convicted of violent offences. Now so long as such prisoners remained behind the bars in Congress provinces themselves, no adequate pressure could be brought to bear on the Bengal ministry who would excuse themselves by pointing out to the former. Months elapsed without anything being done till the session of Congress at Haripura approached. At this Congress the left-wingers had decided to wage a battle royal on the issue of the political prisoners. On the eve of this Congress, the U.P. and Bihar ministries decided to release most of the political prisoners in their provinces, numbering about three dozens. The Governors objected to this wholesale release, insisted on the examination of individual cases by themselves prior to release, and on the refusal of their ministries to agree to this referred the matter to the Government

of India. The Governor General vetoed these proposals in exercise of his special powers under Section 126 (5) of the Act. This created a crisis of the first magnitude and the U P and Bihar ministries resigned (Feb 1938). The Haripura Congress met under the shadow of this crisis, but thanks to the coolness and moderation of Mahatma Gandhi, the crisis was not allowed to become general. Following an appeal from Mahatma Gandhi the Viceroy issued a statement virtually retracing his steps, and the U P. and Bihar Ministries withdrew their resignations. The political prisoners in question were soon after released. This was the signal for an agitation in Bengal for a similar release. The prisoners confined in Andamans started a hungerstrike. Mahatma Gandhi intervened. He obtained an assurance from Andaman and Bengal prisoners that they would abjure violence in future and called upon the Bengal Government to set its politicals free. In April 1938 prolonged negotiations between him and the Bengal government took place, as a result of which a scheme for the gradual release of prisoners was agreed upon.

Labour and Peasant movements

Next in importance to the issue of the release of political prisoners, there was the problem of labour. The advent of Congress ministries was followed by a series of strikes in the various industrial centres for increase of wages and bettering of conditions of work. The most serious of these was the Cawnpore textile strike (June 1938) lasting for more than 50 days. In these strikes the Congress government on the whole supported the cause of

workers though they insisted throughout on law and order and put down with a strong hand any signs of disturbance. Closely allied with labour trouble, there has been the peasants agitation for security of tenure, reduction of rents, and curtailment or abolition of the powers of Zamindars. This agitation has been particularly keen in Bihar and U P. The former province has already passed two tenancy bills in agreement with the Zamindars while a tenancy bill of a more or less radical nature is on the anvil in U P, where a vigorous Zamindars' Movement has risen in opposition to it.

Legislative Programme of the Congress

It is only now that the Congress and other ministries are in the thick of their legislative programme. This is an ambitious one. Besides including measures for the benefit of labourers and peasants it aims at remodelling education, local self government, prison administration and so on. Rural Reconstruction, prohibition and industrialization are in the forefront of ministerial preoccupations.

Attitude of the Services

The attitude of the permanent services has on the whole been unexceptionable, and Congress ministries in the various provinces have from time to time paid tribute to their spirit of co-operation and helpfulness. There was trouble in Bihar when the Chief Secretary circularised the officers in the province to obey only those orders that were communicated to them through him. In U P also there were one or two cases of individual officers not showing due

deference to Parliamentary Secretaries of ministers, but these have been merely passing episodes. No cases of disagreement with the Governors have arisen. The latter are acting in practice like constitutional heads. One or two provincial bills have been referred to the Governor-General (for example, the Madras Debt Legislation) but they have received his assent. In two cases (Bengal Tenancy Bill, and a Bill in N. W. F. P. to repeal certain repressive measures) assent has been refused, but these cases have not led to a crisis. There arose a storm in the Orissa tea cup when it was proposed by the Government of India to appoint a civilian from that province to fill temporarily the Governor's post during the latter's period of leave. The crisis was, however, averted by the permanent Governor's cancelling his leave.

Opposition of Socialists and Communists

The real trouble to the Congress ministers has come not from the bureaucracy or the Governors but from the left wingers of their own party. A large number of socialists and communists have joined the Congress since the acceptance of office by it. They have permeated the labour and the peasant movements in the country particularly in Bihar and U. P. with their ideology and influence, as a result of which these are becoming more and more extremist demanding concessions far in excess of those which the Congress ministries can allow consistently with their policy of class collaboration and nationalism. Mahatma Gandhi has complained that preaching of violence and class war is on the increase, and has advised a purge of the Congress organisation. At its Delhi meeting in Sept.

1938, the All India Congress Committee passed a resolution affirming that civil liberties do not include the preaching of violence, and that Congress ministries may justifiably take action against those who do so. Against this resolution, the socialist members of A. I. C. C. staged a walk out. Assuming that the Congress remains in office, the rift between its right and left wings is bound to widen.

Communal Problem

The formation of popular ministries in the provinces has accentuated the communal differences. At the time of elections, the Congress and the Muslim League had worked more or less in co-operation, and at the time there was a talk of Congress League coalition ministries being formed in certain provinces. Later on, however, the Congress decided to form ministries only in those provinces where it itself was in majority. The result was that the Muslim League party was left in opposition in provinces like U.P., Bihar, C.P., etc., where it had hoped for office conjointly with the Congress. The Governors' Instrument of Instructions requires them to see members of important minorities included in the cabinet. The League took up the position that Congress premiers should appoint its own nominees as their Muslim Colleagues. This they refused. In Bombay an appeal was made to the Governor to get this done, but Sir Roger Lumley told the League deputation in unmistakable language that his duty to protect the legitimate interests of minorities did not imply this. In Orissa the ministry includes no Muslim member, because there is no Muslim member

in the Congress assembly party of that province. As a result of all this, the League has accused the Congress of being anti-Muslim, and has called upon the Muslims in the country to organise themselves under the banner of the League to protect their interests. Objections have been raised against the singing of *Bande Matram*, and the hoisting of Congress flags on public institutions. A series of Hindu Muslim riots have taken place in the various cities in connection with the religious festivals. The Congress has replied by a programme of Muslim Mass Contact which, however, hitherto does not appear to be very successful. An attempt to compose Hindu Muslim differences through a Congress League pact has recently broken down because the League wanted to be recognised as the sole representative body of Muslims in India and the Congress was unable to concede this demand.

Growth of the Congress Influence in other Provinces

Of the five provinces which started with the non Congress ministries two namely, North West Frontier Province, and Assam have already succumbed to the Congress influence and in these Congress coalition ministries have been formed. Sind also appears to be moving in the same direction. Of the non Congress ministries that of Sir Sikandar Hayat Khan in the Punjab appears to be the most successful. It has a solid majority behind it in which are included besides the Muslims also a fair number of Hindus and Sikhs. This ministry has set its face against communalism and has placed certain useful measures

on the Statute book. In Bengal the ministry of Mr. Fazlul Haq has rather had a bad time, and is becoming more and more instable every day. Bengal is the province of landlords and political prisoners. In both these directions the Fazlul Haq ministry has found it difficult to chalk out a policy satisfactory to the various conflicting sets of opinion.

C P Ministerial Crisis

Of the Congress ministries that in C P has had the most troubled career. Early in its history there arose the Sharif case in which Mr. Sharif, the minister in charge of the department of law and justice, remitted the term of imprisonment of a Muslim prisoner convicted of a crime involving serious moral turpitude. When this became known there was a great public indignation aroused, refusing to allow the matter to be hushed up. The Congress High Command took up the matter, invited legal opinion, and as a result of its decision Mr. Sharif resigned. This was the first scandal tarnishing the reputation of C P Ministry. It was, however, soon overshadowed by another arising out of the quarrels of two parties in which the C P Ministers had become divided. An attempt at compromise failed, and in Aug. 1938 Dr. Khare resigned his premiership with the object of getting rid of some of his troublesome colleagues. The latter, however, ignored the convention that the premier's resignation dissolves the cabinet, and refused to resign without the permission of the Congress High Command. Thereupon, Sir Francis Wylie, the Governor of C P dismissed the recalcitrant ministers, and called upon Dr. Khare to form another cabinet.

This he did. Soon after this the Congress Working Committee met at Wardha. It censured both the Governor and the Premier, calling upon the latter to resign. This he did. At a meeting of the C. P. Assembly party he was ousted from party leadership, and one of his opponents was elected to fill his place. This episode made of Dr. Khare, a sort of martyr and a large section of the press of the country took up his cause criticising the Congress Working Committee for its alleged high handedness.

Fascist tendencies in Congress

This episode and certain other cases of intervention by the Congress Parliamentary and Working Committees in provincial affairs has led many critics to assert that the Congress party is working provincial autonomy in an undemocratic manner, and developing certain Fascist tendencies. According to these critics democracy demands the autonomy of the assembly parties and ministries in the various provinces, and their responsibility should be to the provincial legislature and the electorate rather than to an outside body like the Parliamentary Sub Committee or the Working Committee. Besides the Sharif and Khare cases there have been three others also in which the Congress High Command has intervened and set aside the decisions of provincial ministries. The first of these occurred in Madras, the assembly of which province had decided to send its Speaker Mr. Sambamurti on a European tour to study the procedure of various European assemblies. The Working Committee vetoed this proposal on the ground that this would create an impression abroad that the Congress ministries

had settled down to work the Constitution. The other case arose in Bihar where the Parliamentary Committee intervened in connection with the Tenancy Bill to effect a compromise with the Zamindars. The last case of the kind has recently arisen (Oct 1938) in connection with the U P Tenancy Bill. Following a deputation of Zamindars to the Parliamentary Board it has decided to intervene and make a compromise with the Zamindars. The Tenancy Sub Committee of the U P provincial Congress Committee protested against this proposed intervention on the ground that neither the provincial ministry, nor the Provincial Congress Committee asked for it. In reply to this criticism the Working Committee passed a resolution to the effect that the Parliamentary Sub Committee was empowered generally to guide and supervise the work of provincial ministries and therefore, it could intervene in provincial affairs even unasked. So also with the Khare episode the Working Committee enunciated the principle that the provincial ministries were directly responsible to the Congress High Command while their responsibility to the people was only indirect and through the Congress Working Committee.

The Democratic traditions of other countries especially England

Now there is no doubt that all this is contrary to the established principles of 19th century democracy. Even today in England in the case of the Conservative Party at least the non parliamentary or outside portion of the party organisation is mainly an electoneering

and funds raising body having little hand in the determination of cabinet policy. It has, however, been otherwise with the Labour Party whose cabinets have been rigidly controlled by the executive of the party as a whole. The Labour cabinet crisis of 1931 was a result of a conflict between the Premier and the party executive and it tore the party in two. The conclusion, therefore, appears to be that the control of parliamentary section of a party and the cabinet by the party organisers outside is by no means peculiar to the Congress party in India. Precedents from British practice can be adduced in support of this tendency, and there are scholars who are of opinion that this is really the latest technique of Parliamentary government. Its essence is the concentration of power in the hands of the leadership of a well knit party owing responsibility direct to the electorate. But the Congress High Command has a better justification than this to offer. It has pointed out that the centralised direction of provincial affairs on the part of the Congress has been necessitated by the fact that the British govt. in India is pursuing a uniform policy in all the provinces in regard to the popular claims for power. Thus the assurance demanded by the Congress was refused by the various provincial Governors in exactly the same terms showing that they had been prescribed by the Government of India. The struggle for power between the British government and the people in this country is by no means over yet, and what general can afford to introduce decentralisation in command while yet facing the adversary? It is only when the transfer of power from the British

government to the people has become complete and the Governor General and Governors have turned into purely constitutional heads that the Congress can allow its provincial ministries to function in a fully autonomous manner

The Present Phase of the Congress need of the times

There is a good deal of force in this argument. Political institutions are bound to be effected by the environment in which they work. Real democracy implies full power in the hands of the people and without that it cannot function in the normal way. We may therefore, allow that the peculiar functioning of Congress ministries just at present is the result of the exigencies of the present political situation in the country. Still it is necessary to remember that the present often leaves a legacy for the future, and that too much insistence on concentration of power in the hands of the Congress executive just now might result in the survival of the practice in future too, when the need for it has disappeared. It would therefore seem that interventions of Congress High Command in provincial affairs, so far as possible should be limited to those matters only in which relations with the British government in India or all India issues are involved. The impression that provincial premiers are but puppets in the hands of the Congress High Command should sedulously be avoided.

Finance and popular ministries

As shown in a previous chapter the most baffling problem before the provincial ministries is that of

finance In all the nation building departments, a great lee way has to be made up necessitating a vastly increased revenue and expenditure while prohibition, and reduction of agricultural rents will curtail even the existing income of provincial governments Economy in expenditure is largely barred out by the statutory protection granted to the emoluments of the higher services The future of provincial ministries will greatly depend on the extent to which the British government is ready to make financial readjustments increasing the provincial resources Provincialising of all the services in the provinces is a step urgently needed

Congress and the Federation

But the most formidable hurdle yet to be crossed by the provincial ministries specially those of a Congress complexion is the federation issue Failing a satisfactory solution of that question, it is just possible that the provincial constitutions in a good many provinces may have to be suspended or abrogated altogether Till this issue, therefore, is settled, the future of provincial autonomy remains problematical

Conclusion

For the rest the provincial ministries have hitherto worked successfully, and their work has called forth tribute from British as well as Indian public men Due to inexperience or abnormal political situation in the country a few mistakes have occurred here and there, and certain disquieting tendencies of a communal or class character have come into prominence These

are, however, only a temporary phase of the shifting of political centre of gravity from one point to another, and in fullness of time an equilibrium will establish itself. A disposition to maintain justice between the various classes and communities has been manifest. Above all a commendable zeal to better the lot of the people of the country by spread of education, sanitation, and industrialisation has informed the policy of most of our provincial ministries

APPENDIX I

Legislative Lists

List I

Federal Legislative List

1 His Majesty's naval military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval military or air forces borne on the Indian establishment central intelligence bureau preventive detention in British India for reasons of State connected with defence external affairs or the discharge of the functions of the Crown in its relations with Indian States

2 Naval military and air force works local self government in cantonment areas (not being cantonment areas of Indian State troops) the regulation of house accommodation in such areas and within British India the delimitation of such areas

3 External affairs the implementing of treaties and agreements with other countries extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India

4 Ecclesiastical affairs including European consulars

5 Currency coinage and legal tender

6 Public debt of the Federation

7 Posts and telegraphs, including telephones, wireless,

broadcasting, and other like forms of communication, Post Office Savings Bank

8 Federal Public Services and Federal Public Service Commission

9 Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues

10 Works lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement

11 The Imperial Library, the Indian Museum, the Imperial War Museum the Victoria Memorial and any similar institutions controlled or financed by the Federation

12 Federal agencies and institutes for the following purposes, that is to say for research, for professional or technical training or for the promotion of special studies

13 The Benares Hindu University and the Aligarh Muslim University.

14 The Survey of India the Geological, Botanical and Zoological Surveys of India Federal meteorological organisations

15 Ancient and historical monuments archaeological sites and remains

16 Census

17 Admission into and emigration and expulsion from, India, including in relation hereto the regulation of the movements in India of persons who are not British subjects domiciled in India subjects of any Federated State, or British subjects domiciled in the United Kingdom, pilgrimages to places beyond India

18 Port quarantine seamen's and marine hospitals, and hospitals connected with port quarantine

19 Import and export across customs frontiers as defined by the Federal Government

20 Federal railways the regulation of all railways other than minor railways in respect of safety maximum and minimum rates and fares station and service terminal charges interchange of traffic and the responsibility of the administrations of such railways as carriers of goods and passengers

21 Maritime shipping and navigation including shipping and navigation on tidal waters Admiralty jurisdiction

22 Major ports that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein

23 Fishing and fisheries beyond territorial waters

24 Aircraft and air navigation the provision of aerodromes regulation and organisation of air traffic and of aerodromes

25 Lighthouses, including lightships beacons and other provision for the safety of shipping and aircraft

26 Carriage of passengers and goods by sea or by air

27 Copyright, inventions, designs, trademarks and merchandise marks

28 Cheques, bills of exchange, promissory notes and other like instruments,

29 Arms, firearms, ammunition

30 Explosives

31, Opium, so far as regards cultivation and manufacture, or sale for export

32 Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable so far as regards possession, storage and transport

33 Corporations, that is to say, the incorporation regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative

societies, and of corporations, whether trading or not, with objects not confined to one unit

34 Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest

35 Regulation of labour and safety in mines and oilfields

36 Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest

37 The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business, undertaken by a Federated State Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the provincial legislative List or the Concurrent Legislative List, by a Province

38 Banking that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State

39 Extension of the powers and jurisdiction of members of a police force belonging to any part of British India, to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit

40 Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41 The salaries of the Federal Ministers, of the President

and Vice President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly the salaries, allowances and privileges of the members of the Federal Legislature, and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature

42 Offences against laws with respect to any of the matters in this list

43 Inquiries and statistics for the purposes of any of the matters in this list

44 Duties of customs, including export duties

45 Duties of excise on tobacco and other goods manufactured or produced in India except

(a) alcoholic liquors for human consumption,

(b) opium, Indian hemp and other narcotic drugs and narcotics, non narcotic drugs,

(c) medicinal and toilet preparations containing alcohol, or any substance included in subparagraph (b) of this entry.

46 Corporation tax.

47 Salt

48. State lotteries

49. Naturalisation.

50 Migration within India from or into a Governor's Province or a Chief Commissioner's Province

51 Establishment of standards of weight

52 Ranchi European Mental Hospital

53 Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court and the conferring thereon of supplemental powers.

54 Taxes on income other than agricultural income

55 Taxes on the capital value of the assets exclusive of agricultural land of individuals and companies, taxes on the capital of companies

56 Duties in respect of succession to property other than agricultural land

57 The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts

58 Terminal taxes on goods or passengers carried by railway or air, taxes on railway fares and freights

59 Fees in respect of any of the matters in this list, but not including fees taken in any Court

List II

Provincial Legislative List

1 Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power) the administration of justice constitution and organisation of all courts, except the Federal Court and fees taken therein preventive detention for reasons connected with the maintenance of public order persons subjected to such detention

2 Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list procedure in Rent and Revenue Courts

3 Police, including railway and village police

4 Prisons reformatories Borstal institutions and other institutions of a like nature and persons detained therein arrangements with other units for the use of prisons and other institutions

5 Public debt of the Province

6 Provincial Public Services and Provincial Public Service Commissions

7 Provincial pensions, that is to say, pensions payable by the province or out of Provincial revenues

8 Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province

9 Compulsory acquisition of land

10 Libraries, museums and other similar institutions controlled or financed by the Province

11. Elections to the Provincial Legislature subject to the provisions of this Act and of any Order in Council made thereunder.

12 The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy-President thereof the salaries allowances and privileges of the members of the Provincial Legislature and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature

13 Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts district boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration

14 Public health and sanitation hospitals and dispensaries, registration of births and deaths

15 Pilgrimages, other than pilgrimages to places beyond India

16 Burials and burial grounds.

17 Education

18 Communications, that is to say, roads bridges, ferries, and other means of communication not specified in List I, minor railways subject to the provisions of List I with respect to such railways municipal tramways ropeways inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ports, subject to the provisions in List I with regard to major ports vehicles other than mechanically propelled vehicles

19 Water that is to say, water supplies, irrigation and canal drainage and embankments, with storage and water power.

20 Agriculture, including agricultural education and research protection against pests and prevention of plant diseases, improvement of stock and prevention of animal diseases, veterinary training and practice, pounds and the prevention of cattle trespasses

21 Land, that is to say, rights in or over land,

land tenures, including the relation of landlord and tenant, and the collection of rents transfer, alienation and devolution of agricultural land, land improvement and agricultural loans, colonization, Courts of Wards, encumbered and attached estates, treasure trove

22 Forests

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control

24 Fisheries

25 Protection of wild birds and wild animals

26 Gas and gasworks

27 Trade and Commerce within the Province, markets and fairs, money lending and money lenders

28. Inns and innkeepers

29 Production, supply and distribution of goods, development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control

30 Adulteration of foodstuffs and other goods weights and measures

31 Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III

32 Relief of the poor, unemployment

33 The incorporation, regulation, and winding up of corporations other than corporations specified in List I, unincorporated trading, literary, scientific, religious and other societies and associations, co operative societies

34 Charities and charitable institutions charitable and religious endowments

35 Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36 Betting and gambling

37 Offences against laws with respect of any of the matters in this list

38 Inquiries and statistics for the purpose of any of the matters in this list

39 Land revenue including the assessment and collection of revenue the maintenance of land records survey for revenue purposes and records of rights and alienation of revenue

40 Duties of excise of the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption

(b) opium Indian hemp and other narcotic drugs and narcotics non narcotic drugs

(c) medicinal and toilet preparations containing alcohol or any substance included in sub paragraph (b) of this entry

41 Taxes on agricultural income

42 Taxes on lands and buildings hearths and windows

43 Duties in respect of succession to agricultural land

44 Taxes on mineral rights subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development

45 Capitation taxes

46 Taxes on professions trades callings and employments

47 Taxes on animals and boats

48 Taxes on the sale of goods and on advertisements

49 Cesses on the entry of goods into a local area for consumption use or sale therein

50 Taxes on luxuries including taxes on entertainments amusements betting and gambling

51 The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty

52 Dues on passengers and goods carried on inland waterways

53 Tolls

54 Fees in respect of any of the matters in this list, but not including fees taken in any Court

List III

Concurrent Legislative List

Part I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act, the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths, recognition of laws, public acts and records and judicial proceedings

6. Marriage and divorce infants and minors; adoption

7. Wills, intestacy and succession save as regards agricultural land

8. Transfer of property other than agricultural land, registration of deeds and documents.

9. Trusts and Trustees

10. Contracts, including partnership, agency contracts of

carriage, and other special forms of contract, but not including contracts relating to agricultural land

11 Arbitration.

12 Bankruptcy and insolvency, administrators general and official trustees

13 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty

14 Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II

15 Jurisdiction and powers of all courts except the Federal Court with respect to any of the matters in this list

16 Legal medical and other professions

17 Newspapers, books and printing presses

18 Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient

19 Poisons and dangerous drugs

20 Mechanically propelled vehicles

21 Boilers

22 Prevention of cruelty to animals

23 European vagrancy, criminal tribes

24 Inquiries and statistics for the purpose of any of the matters in this part of this List

25 Fees in respect of any of the matters in this part of this List, but not including fees taken in any Court

Part II

26 Factories

27 Welfare of labour, conditions of labour, provident funds, employers' liability and workmen's compensation, health insurance including invalidity pensions old age pensions

28 Unemployment insurance

29 Trade unions industrial and labour disputes

30 The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants

31 Electricity

32 Shipping and navigation on inland waterways as regards mechanically propelled vessels and the rule of the road on such waterways carriage of passengers and goods on inland waterways

33 The sanctioning of cinematograph films for exhibition

34 Persons subjected to preventive detention under Federal authority

35 Inquiries and statistics for the purpose of any of the matters in this part of this List

36 Fees in respect of any of the matters in this part of this List but not including fees taken in any Court

APPENDIX II

Draft of the Instrument of Accession

A Draft Instrument of Accession was circulated to the Princes of India and in August 1936 was published in India. The text is as follows

Instrument of Accession of (insert full name and title)

Whereas proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States And whereas those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom and by the accession of Indian States And whereas provision for the Constitution of a Federation of India has now been made in the Government of India Act, 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare and such declaration cannot be made until the requisite number of Indian States have acceded to the Federation And whereas the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation Now therefore I (insert full name and title) ruler of (insert name of State), in the exercise of my sovereignty in and over my said State, for the purpose of co operating in the furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of

India with the Provinces, called Governors' Provinces, and with the Provinces, called Chief Commissioners' Provinces and with the Rulers of other Indian States, do hereby execute this my Instrument of Accession, and

1 I hereby declare that subject to His Majesty's acceptance of this Instrument I accede to the Federation of India as established under the Government of India Act, 1935 (hereinafter referred to as "the Act ") with the intent that His Majesty the King the Governor General of India, the Federal Legislature, the Federal Court and any other Federal Authority established for the purposes of the Federation shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to the State of (hereinafter referred to as 'this State ') such functions as may be vested in them by or under the Act

2 I hereby assume the obligation of assuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3 I accept the matters specified in the First Schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State, and in this Instrument and in the said First Schedule I specify the limitations to which the power of the Federal Legislature to make laws for this State, and the exercise of the executive authority of the Federation in this State, are respectively to be subject Whereunder the First Schedule hereto the power of the Federal Legislature to make laws for this State with respect to any matter specified in that schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to that matter otherwise than in accordance with and subject to that limitation

4 The particulars to enable due effect to be given to the provisions of sections 147 and 149 are set forth in the Second Schedule hereto.

5 Reference in this Instrument to laws of the Federal Legislature include references to Ordinances promulgated, Acts enacted and laws made by the Governor General of India under sections 42 to 45 of the Act inclusive

6 Nothing in this Instrument affects the continuance of my sovereignty in and over this State or, save as provided by this Instrument or by any Law of the Federal Legislature made in accordance with the terms thereof the exercise of any of my powers authority and rights, in and over this State

7 Nothing in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect provided that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the Second Schedule thereto and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment but no such amendment shall unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which, by virtue of this Instrument, are exercisable by His Majesty or any Federal authority in relation to this State

8 The Schedules hereto annexed, shall form an integral part of this Instrument

9 This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the day of nineteen hundred and this Instrument shall on that day, become null and void for all purposes whatsoever

10 I hereby declare that I execute this Instrument for myself, my heirs and successors, and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors

(Then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler)

Additional Paragraphs for Insertion in Proper Cases

A Whereas I am desirous that functions in relation to the administration in this State of the laws of the Federal Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor General of India and are set out in the Schedule hereto now therefore I hereby declare that I accede to the Federation with the assurance that said agreement will be executed and the said agreement when executed shall be deemed to form part of this Instrument and shall be construed and have effect accordingly

B The provisions contained in Part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof inclusive are not to apply in relation to this State

C Whereas notice has been given to me of His Majesty's intention to declare in signifying his acceptance of this, my Instrument of Accession, that the following areas

are areas
to which it is expedient that the provisions of subsections of (1) of section 294 of the Act should apply now therefore I hereby declare that this Instrument is conditional upon His Majesty making such declaration.

APPENDIX III

Draft Instruments of Instructions to the Governor-General and Governors

(Reprinted by permission of the Controller of H. M. Stationery Office)

The Instruments of Instructions under the provisions of sections 13 and 53 of the Act are to be approved by both Houses of Parliament. The following draft of the Instrument of Instructions to the Governor General was presented to Parliament as illustrating the content of the document which the Government had in mind. The draft is based in the main on recommendations of the Joint Select Committee and also contains some passages and phrases which are contained in the existing Instructions to the Governor General (Cmd 4805).

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR GENERAL

Whereas by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor General of India

And Whereas by those Letters Patent and by the Act of Parliament passed on _____ and entitled the Government of India Act, 1935 (hereinafter called 'the Act') certain powers, functions and authority for the government of India and of Our Federation of India are declared to be vested in the Governor General as Our Representative

And whereas without prejudice to the provisions in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our

Governor General to give effect to any instructions so received, We are minded to make general provision regarding the manner in which Our said Governor General shall execute all things which according to said Act and said Letters Patent belong to his Office and to the trust which we have reposed in him

AND WHEREAS by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor General shall be laid by Our Secretary of State before both Houses of Parliament

And Whereas by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor General shall be laid by Our Secretary of State before them accordingly have presented to Us an Address praying that Instructions may be issued to Our Governor General in the form which hereinafter follows

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows

A INTRODUCTORY

I Under these Our Instructions unless the context otherwise require, the term Governor General shall include every person for the time being administering the Office of Governor General according to the provisions of Our Letters Patent constituting the said Office

II Our Governor General for the time being shall with all due solemnity cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice of India for the time being or in his absence other Judge of the Federal Court

III Our said Governor General shall take the oath of allegiance and the oath for the due execution of the Office of our Governor General of India and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice of India for the time being or in his absence any Judge of the Federal Court shall, and is hereby required to tender and administer to him.

IV And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended

V And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath

VI And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor General, he shall not quit India during his term of office without having first obtained leave from Us under Our Principal Secretaries of State

B IN REGARD TO THE EXECUTIVE AUTHORITY OF THE FEDERATION

VII Our Governor General shall do all that in him lies to maintain standards of good administration, to encourage religious toleration, co operation and goodwill among all classes and creeds, and to promote all measures making for moral, social and economic welfare

VIII In making appointments to his Council of Ministers Our Governor General shall use his best endeavours to select his Ministers in the following manner that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature But, in so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers

IX In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, Our Governor General shall in the exercise of the powers

conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the specified responsibilities which are by said Act committed to him or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment in any of which cases our Governor General shall notwithstanding his Ministers advice act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seem requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI Our Governor General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature and those classes who, whether an account of the smallness of their number or their lack of educational or material advantages or from any other cause cannot as yet fully rely for their welfare on joint political action in the Federal Legislature shall not suffer or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further Our Governor General shall interpret the said

special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of those Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public

XII In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act, and the safeguarding of their legitimate interests Our Governor General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other laws for the time being in force but also against any action which, in his judgment, would be inequitable

XIII The special responsibility of Our Governor General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions, and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the

interests of the United Kingdom rather than to further the *economic interests of India*. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions of imports) and indirect discrimination by means of differential treatment of various types of products, and Our Governor General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions if he is satisfied that such measures are proposed with the aforesaid intention. It also extends subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XV Our Governor General shall construe his responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised,* whether derived from treaty, grant, usage, sufferance, or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession the Federal Legislature may make laws for his State and his subjects.

XVI In the framing of rules for the regulation of the business of the Federal Government Our Governor General shall ensure that amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted

* The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the State.

upon any proposal by any other Minister which affects the finances of the Federation and further that no reappropriation within a grant shall be made by any Minister otherwise than after consultation with the Finance Minister and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers

XVII Although it is provided in the said Act that the Governor General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor General should have regard to this instruction in his administration of the Department of Defence and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of our Indian Forces on service outside India

XVIII Further it is Our will and pleasure that, in the administration of the Department of Defence, Our Governor-General shall obtain the views of Our Commander in Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander in Chief may so request, on any occasion when Our Governor General communicates with Our Secretary of State upon them

XIX And We desire that, although the financial control of Defence administration must be exercised by the Governor General at his discretion nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the

service of Defence are settled and laid before the Federal Legislature

C. IN REGARD TO RELATIONS BETWEEN THE FEDERATION,
PROVINCES AND FEDERATED STATES

XX Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession

And whereas in the interest of the harmonious cooperation of the several members of the body politic the said Act has empowered Our Governor General to exercise at his discretion *certain powers affecting the relations between the Federation and Provinces and States*

It is Our will and pleasure that Our Governor General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws

XXI It is Our desire that Our Governor General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor General shall endeavour to secure the cooperation of the Governments

of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs

XXII In particular We require our Governor General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces of Federated States are interested

XXIII Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income. Our Governor General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account, and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of moneys assigned to the Provinces from taxes on income

XXIV Our Governor General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation, but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a

grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency

XXV Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces

XXVI In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal Law Our Governor General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those Codes of law which uniformity of legislation has hitherto been secured

D MATTERS AFFECTING THE LEGISLATURE

XXVII Our Governor General shall not assent in Our name to, but shall reserve for the signification of Our pleasure any Bill of any of the classes herein specified, that is to say

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India,
- (b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill
- (c) any Bill passed by a Provincial Legislature and

reserved for his consideration which would alter the character of the Permanent Settlement,

- (d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act

XXVIII It is further Our will and pleasure that if an Agreement is made with his Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on Our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam

XXIX It is Our will that the power vested by the said Act in Our Governor General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquility shall not be exercised unless, in his judgment, the public discussion of the Bill clause or amendment would itself endanger peace and tranquility

XXX It is Our will and pleasure that, in choosing representatives of British India for the seats in the Council of State which are to be filled by Our Governor General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women, and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall, so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British India representatives of the Federal Assembly

E GENERAL

XXXI And finally, it is Our will and pleasure that Our Governor General should so exercise the trust which we have reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among our Dominions

Draft Instrument of Instructions to Governors

(Presented to Parliament, November 1936)

Whereas by Letters Patent bearing date the day of

Nineteen hundred and thirty seven We have made permanent provision for the Office of Governor of

And Whereas by those Letters Patent and by the Act of Parliament passed on the second day of August, Nineteen hundred and thirty five and entitled the Government of India Act, 1935 (hereinafter called "the Act"), certain powers, functions and authority for the government of the Province of are declared to be vested in the Governor as Our Representative

And Whereas, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the Act and the said Letters Patent, belong to his Office, and to the trust which We have reposed in him

And Whereas a draft of these Instructions has been laid before Parliament in accordance with the provisions of subsection (1) of section fifty three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these instructions

NOW THEREFORE, We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows :—

A—INTRODUCTORY

I Under these Our Instructions, unless, the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province

III Our said Governor shall take the oath of allegiance and the oath for due execution of the Office of Our Governor of , and for the due and impartial administration of justice in the form hereto appended, which oath the Chief Justice for the time being or in his absence any Judge, of the High Court, shall and he is hereby required to, tender and administer unto him

IV And We do authorise and require Our Governor, by himself, or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended

V And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath

VI And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State

B—IN REGARD TO THE EXECUTIVE AUTHORITY OF
THE PROVINCE

VII In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely

to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII In all matters within the scope of the executive authority of the province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment, in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own

IX Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantage or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question

which has not found favour with the majority

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities and so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public

X In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force but also against any action which, in his judgment would be inequitable

XI The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act

XII Our Governor shall construct his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise and he shall refer to Our Governor General any questions which may arise as to the existence of any such right

XIIA In pursuance of the Agreement made between Us and His Exalted Highness the Nizam of Hyderabad as contemp

lated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable

(The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only)

XIII In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve, and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority

XIV Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our

Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be place this information at the disposal of Our Governor General

XV In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities Our Governor shall if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare

XVA Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North West Frontier He shall therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor General in respect of the tribal areas situated between the frontiers of India and the North West Frontier Province and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter

(The foregoing paragraph will be included in the Instructions to the Governor of the North West Frontier Province only)

C—MATTERS AFFECTING THE LEGISLATURE

XVI In determining whether he shall in Our name give his assent to or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act

XVII Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say —

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India,
- (b) any Bill which in his opinion would if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill
- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act,
- (d) any Bill which would alter the character of the Permanent settlement

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill

XVIA Our Governor in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar or in notifying Our assent to any such Bill reserved for the signification of our pleasure shall state that the assent to the Bill in its application to Berar has been given by virtue of the assent of His Exalted Highness the Nizam to the aforesaid Agreement

(The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only)

XVIII It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, a clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquility shall not be exercised unless, in his

judgment the public discussion of the Bill, clause or amendment would itself endanger peace and tranquility.

XIX It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election and in particular to secure representation for Women and the Scheduled Castes in that Chamber

D—GENERAL

XX And generally Our Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province, and to secure amongst all classes and creeds cooperation, good will and mutual respect for religious beliefs and sentiments, and he shall further have regards to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government

XXI And we do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX IV

Principal Existing Rights of Imperial Services Part I
List of Principal Existing Rights of Officers appointed by the
Secretary of State in Council (Note—In the case of sections
the reference is to the Government of India Act of 1919, and in
the case of rules to rules made under the Act)

(1) Protection from dismissal by any authority subordinate
to the appointing authority [section 96 B (1)]

(2) Right to be heard in defence before an order of
dismissal, removal or reduction is passed (Classification rule 55)

(3) Guarantee to persons appointed before the commence-
ment of the Government of India Act, 1919, of existing and
accruing rights or compensation in lieu thereof [section 96
B (2)]

(4) Regulation of conditions of service pay and allowance
and discipline and conduct, by the Secretary of State in Council
[section 96 B (2)]

(5) Power of the Secretary of State in Council to deal
with any case in such a manner as may appear to him to be just
and equitable notwithstanding any rules made under section 96
B [section 96 B (5)]

(6) Non votability of salaries, pensions and payments and
payments on appeal [sections 67 A (iii) and (iv) and 72 D (3)
(iv) and (v)]

(7) The requirement that rules under Part VII A of the
Act shall only be made with the concurrence of the majority of
votes of the Council of India [section 96 B (3)]

(8) Regulation of the right to pensions and scale and
conditions of pensions in accordance with the rules in force at
the time of the passing of the Government of India Act,
1919 [section 96 B (3)]

(9) (1) Reservation of certain posts to members of the Indian Civil Service (section 98)

(11) Appointment of persons who are not members of the Indian Civil Service to offices reserved to members of that service only to be made subject to rules made by the Governor General in Council with the approval of the Secretary of State for India in Council (section 99) or in case not covered by these rules to be provisional until approved by the Secretary of State for India in Council (section 100)

(10) Determination of strength (including the number and character of posts) of all India services by the Secretary of State for India in Council, subject to temporary additions by the Governor General in Council or Local Government (Classification rules 24 and 10)

(11) Provision that posts borne on the cadre of all India services shall not be left unfilled for more than three months without the sanction of the Secretary of State for India in Council (Classification rule 25)

(12) Appointment of anyone who is not a member of an all India service to posts borne on the cadre of such services only to be made with the sanction of the Secretary of State for India in Council save as provided by any law or by rule or orders made by the Secretary of State for India in Council (Classification rule 27)

(13) Sanction of the Secretary of State for India in Council to the modification of the cadre of a Central service Class I which would adversely affect any person who was a member of a corresponding all India service on March 9 1926 or to the creation of any specialist Posts which would adversely affect the members of an all India service the Indian Ecclesiastical and the Indian Political Department (provisos to Classification rules 32 40 42)

(14) Personal concurrence of the Governor required to any order affecting emoluments or pensions any order or formal sanction or any order on a memorial to the disadvantage of an officer of an all India service (Devolution rule 10)

(15) Personal concurrence of the Governor required to an

order of posting of an officer of an All India service (Devolution rule 10)

(16) Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable [section 96 B (1)]

(17) Right of appeal to the Secretary of State in Council (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay or loss caused by negligence or breach of orders, suspension removal or dismissal or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification rules 56, 57, and 58 P)

(18) Right of certain officers to retire under the regulations for premature retirement

Principal Existing Rights of Other Services —Part II

List of Principal Existing Rights of Persons appointed by Authority other than the Secretary of State in Council.

(1) Protection from dismissal by any authority subordinate to the appointing authority [section 96 B (1)]

(2) Right to be heard in defence, before an order of dismissal, removal or reduction is passed subject to certain exceptions (Classification rule 55)

(3) Regulation of the strength and condition of service of the Central services, Class I and Class II, by the Governor General in Council, and of Provincial services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who is a member of the service on March 9, 1926, should be made without the previous sanction of the Governor General in Council (Classification rules 32, 33, 36, 37, 40 and 41)

(4) Personal concurrence of the Governor required to any order affecting emoluments or pensions, an order of formal

censure, or an order on a memorial to the disadvantage of an officer of a Provincial service [Devolution rule (10)]

(5) Right of appeal from any order of censure withholding of increments or promotion reduction recovery from pay of loss caused by negligence or breach of orders, suspension, removal, or dismissal and any order altering or interpreting to his disadvantage the rule or contract regulating conditions of service, pay, allowances or pension and in the case of subordinate services, the right of an appeal against an order imposing a penalty (Classification rules 56, 57, 58 and 54)

APPENDIX V

The Communal Decision and the Poona Pact *

The following is the relevant text of the Communal 'Award' by Mr Ramsay Macdonald Prime Minister, dated the 4th August, which was published simultaneously in London and Simla on the 16th August 1932

Text of the 'Award'

In the statement made by the Prime Minister on December 1 last on behalf of His Majesty's Government at the close of the second session of the Round Table Conference which was immediately afterwards endorsed by both Houses of Parliament it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal question which the Conference had failed to solve His Majesty's Government were determined that India's constitutional advance should not on that account be frustrated and that they would remove this obstacle by devising and applying themselves a provisional scheme

Decision on some aspects of problem

On March 19 last His Majesty's Government having been informed that the continued failure of the communities to reach an agreement was blocking the progress of the plans for the framing of a new constitution stated that they were engaged upon a careful re-examination of the difficult and controversial

* For the material in this Appendix, the authors are indebted to the 'New constitution of India' By Lahiri and Banerji

questions which arose. They are now satisfied that without the decision of at least some aspects of the problem connected with the position of the minorities under the new constitution no further progress can be made with the framing of the constitution.

Proposals confined to Provinces only

His Majesty's Government have accordingly decided that they will include provisions 'to give effect to the scheme set out below in the proposals relating to the Indian constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for representation of the British Indian communities in the provincial legislatures the consideration of representation in the legislature at the centre being deferred. The decision to limit the scope of the scheme implies no failure to realise that the framing of the constitution will necessitate decision of a number of other problems of great importance to the minorities but has been taken in the hope that once a pronouncement has been made upon the basic questions of the method and proportion of representation the communities themselves may find it possible to arrive at a *modus vivendi* on their communal problems which have not as yet received the examination they require. His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to revision of their decision and will not be prepared to give consideration to any representation aimed at securing a modification of it which is not supported by all parties affected. But they are most desirous to close no door to an agreed settlement, should such happily be forthcoming. If therefore before the new Government of India Act has passed into law they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme either in respect of any one or more of the Governor's provinces or in respect of the whole of British India they will be prepared to recommend to Parliament that the alternative should be substituted for the provisions

Communal separate electorates

"Election to the seats allotted to Mahomedan, European and Sikh constituencies will be by voters voting in separate communal electorates covering between them the whole area of a province (apart from any portions which may in special cases be excluded from the electoral area as 'backward') Provisions will be made in the constitution itself to empower the revision of this electoral arrangement (and other similar arrangements mentioned below) after 10 years, with the assent of the communities affected, for the ascertainment of which suitable means will be devised

"All qualified electors who are not voters either in a Mahomedan, Sikh Indian Christian, Anglo-Indian, or European constituency will be entitled to vote in a general constituency

"Seven seats will be reserved for Mahabattas in certain selected plural member general constituencies in Bombay

Concession to Depressed Classes

"Members of the 'depressed classes' qualified to vote will vote in a general constituency In view of the fact that for a considerable period these classes would be unlikely by this means alone to secure any adequate representation in the Legislature a number of special seats will be assigned to them These seats will be filled by election from special constituencies in which only members of 'the depressed classes' electorally qualified will be entitled to vote Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency It is intended that those constituencies should be formed in selected areas where the depressed classes are most numerous and that except in Madras they should not cover the whole area of a province In Bengal, it seems possible that in some general constituencies the majority of voters will belong to the depressed classes Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special depressed class constituencies in that province It is intended to secure that the depressed classes should obtain not less than 10 seats in the Bengal Legislature

Period of continuance

' His Majesty's Government do not consider that these special 'depressed classes' constituencies will be required for more than a limited time. They intend that the constitution shall provide that they shall come to an end after 20 years if they have not previously been abolished under the general powers of electoral revision.

Indian Christians

The election to the seats allotted to Indian Christians will be by voters voting in separate communal electorates. It seems almost certain that practical difficulties will, except possibly in Madras, prevent the formation of Indian Christian constituencies covering the whole area of a province and that accordingly special Indian Christian constituencies will have to be formed only in one or two selected areas in a province. The Indian Christian voters in these areas will not vote in a general constituency. Indian Christian voters outside these areas will vote in a general constituency. Special arrangements may be needed in Bihar and Orissa where a considerable proportion of the Indian Christian community belongs to the aboriginal tribes.

Anglo-Indians

The election to seats allotted to Anglo-Indians will be by voters voting in separate communal electorates. It is at present intended, subject to investigation of any practical difficulties that may arise, that Anglo-Indian constituencies shall cover the whole area of each province, postal ballot being employed, but no final decision has yet been reached.

Women Members

' His Majesty's Government attach great importance to securing that new legislatures should contain at least a small number of women members. They feel at the outset that this object could not be achieved without creating a certain number of seats specially allotted to women. They also feel it is essential that women members should not be drawn disproportionately

from one community. They have been unable to find any system which would avoid this risk and would be consistent with the rest of the scheme for representation which they have found it necessary to adopt except that of limiting the electorate for each special woman's seat to voters from one community. There is one exception. The woman's seat in Assam will be filled from a non-communal constituency at Shillong. Special women's seats have accordingly been specifically divided between the various communities. The precise electoral machinery to be employed in these special constituencies is still under consideration.

Labour

"The seats allotted to labour will be filled from non-communal constituencies. Electoral arrangements have still to be determined, but it is likely that in most of the provinces labour constituencies will be partly trade-union and partly special constituencies as recommended by the Franchise Committee.

Commerce and Industry, Mining, etc

"Special seats allotted to commerce and industry, mining and planting will be filled by election through chambers of commerce and various associations. Details of electoral arrangements for these seats must await further investigation.

Determination of Constituencies

"His Majesty's Government have found it impossible in determining these questions of representation in provincial legislatures to avoid entering into considerable detail. There remains nevertheless the determination of constituencies. They intend that this task should be undertaken in India as early as possible. It is possible in some instances that delimitation of constituencies might be materially improved by slight variations from the number of seats now given. His Majesty's Government reserve the right to make such slight variations for such a purpose, provided they would not materially affect the essential balance between the communities. No such variations will, however, be made in the case of Bengal and the Punjab.

Second Chambers

"The question of composition of second chambers in the provinces has so far received comparatively little attention in constitutional discussions and requires further consideration before a decision is reached as to which provinces shall have a second chamber or a scheme is drawn up for their composition. His Majesty's Government consider that the composition of the upper house in a province should be such as not to disturb in any essential the balance between the communities resulting from the composition of the lower house

Central Legislature

' His Majesty's Government do not propose at present to enter into the question of the size and composition of the legislature at the centre since this involves among other questions that of representation of Indian States which still needs further discussion. They will of course when considering the composition, pay full regard to the claims of all communities for an adequate representation therein

Mr Macdonald's Statement

The Prime Minister Mr Ramsay Macdonald issued an explanatory statement not only as the Prime Minister but as a friend of India who has for the last two years taken a special interest in the question of minorities. The Government, observed Mr Macdonald never wished to intervene in the communal controversies of India. But as the failure of the communities to agree amongst themselves had almost placed an almost insurmountable obstacle in the way of constitutional development it was incumbent upon Government to take action. He argued that however much Government might have preferred a uniform system of joint electorates they found it impossible to abolish the safeguards to which the minorities still attached vital importance. The Government therefore had to face facts and maintain this exceptional form of representation.

Representation of Depressed Classes

He further alluded to two features of the decision, viz,

the representation of the depressed classes and of women. He observed on the former point "Our main object in the case of the Depressed Classes has been, while securing to them the spokesmen of their own choice in the legislatures of the province where they are found in large numbers, at the same time to avoid electoral arrangements which would perpetuate their segregation. Consequently Depressed Class voters will vote in general Hindu Constituencies and an elected member in such a constituency will be influenced by his responsibility to this section of the electorate, but for the next 20 years there will also be a number of special seats filled from special Depressed Class electorates in the areas where these voters chiefly prevail. The anomaly of giving certain members of the Depressed Classes two votes is abundantly justified by the urgent need of securing that their claims should be effectively expressed and the prospects of improving their actual condition promoted."

On the second point, Mr. Macdonald confessed that there were undoubtedly serious objections to extending the communal method to the representation of women. But, he added that "if seats are to be fairly distributed among the communities, there is, in the existing circumstances, no alternative. He urged that critics of the decision in India should remember when examining the scheme, that 'they themselves failed when pressed again and again to produce to us some plan which would give general satisfaction."

Genesis of the Poona Pact : Mahatma Gandhi's letters on Depressed Class electorates

Some months prior to the publication of the 'Award' Mahatma Gandhi had addressed a letter from the Yerwada Central Prison to Sir Samuel Hoare, dated the 11th March 1932. In this, Gandhi invited the special attention of the Secretary of State to the statement made by himself at the end of his speech at the Second Session of the Round Table Conference where he said that he would resist with his life the grant of separate electorates to the Depressed Classes.

Mr. Macdonald's reply

On the publication of the Prime Minister's Communal Decision, Gandhi ji wrote to the Prime Minister on August 18, in which he intimated to the Government that, while many other parts of the communal decision were open to very grave objection they did not warrant such self-immolation as he proposed, by going on a fast on the 20th September, which fast he would continue even if he was released. Mr Macdonald in his reply, dated September 8th, explained the purpose of the arrangements regarding the depressed classes and observed that having once given their decision the Government would stand by it, the only alternative being an agreement by the communities themselves. In a final letter to Mr Macdonald, written the next day Gandhi ji said that the matter was one of pure religion with him, and he asked 'Do you realise that, if your decision stands and the constitution comes into being, you arrest the marvellous growth of the work of the Hindu reformers who have dedicated themselves to the uplift of their suppressed brethren in every walk of life' ? He had Gandhi ji said, in this circumstance, been compelled reluctantly to adhere to the decision conveyed to the Prime Minister.

The Poona Pact

Between the 19th and 24th September, representatives of the depressed classes and public men including Pandit Malviya, Dr Ambedkar, Dr Solanki, Rao Bahadur Srinivasan, Sir Tej Bahadur Sapru and Mr Rajbhoj met at Bombay and Poona and ultimately produced in consultation with Mahatma Gandhi, an agreement which was accepted by the Government on the 26th. The following is the text of the agreement —

Assignment of Seats

(1) There shall be seats reserved for the depressed Classes out of the general electorate seats in the Provincial Legislatures as follows Madras 30, Bombay with Sind 15, Punjab 8, Bihar and Orissa 18, Central Provinces 20, Assam 7, Bengal 30, United Provinces 20, Total 148. These figures are based on

the total strength of the Provincial Councils, announced in the Prime Minister's decision

Procedure of election

(2) Election to these seats shall be by joint electorates subject, however, to the following procedure

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single votes the four persons getting the highest number of votes in such primary election, shall be candidates for election by the general electorate

Representation in Central Legislature

(3) Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorates and reserved seats by the method of primary election in the manner provided for in Clause two above, for their representation in the Provincial Legislature

(4) In the Central Legislature, eighteen per cent of the seats allotted to the general electorate for British India in the said legislature shall be reserved for the Depressed Classes

(5) The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures as herein before mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement under the provision of Clause six below

(6) The system of representation of the Depressed Classes by reserved seats in the Provincial and Central Legislatures as provided for in Clauses 1 and 4 shall continue until determined by mutual agreement between the communities concerned in the settlement

(7) Franchise for the Central and Provincial Legislatures for the Depressed Classes shall be as indicated in the Lothian Committee's Report

Local Bodies, Services and Education

(8) There shall be no disabilities attaching to any one on the ground of his being a member of the Depressed Classes in regard to any election to local bodies or appointment to the Public Services. Every endeavour shall be made to secure fair representation of the Depressed Classes in these respects, subject to such educational qualifications as may be laid down for appointment to the Public Services.

(9) In every province out of the educational grant, an adequate sum shall be earmarked for providing educational facilities to the members of the Depressed Classes.

Government's explanatory statement in accepting relevant parts of Poona Pact

The Government in accepting the Poona Settlement observed that the total number of general seats, including those reserved for the Depressed Classes under the agreement, will in each province remain the same as the number of general seats *plus the number of special Depressed Class seats provided for in the decision of His Majesty's Government*.

His Majesty's Government note that the agreement deals also with certain questions outside the scope of their Award of August 4. Clauses 8 and 9 deal with general points, the realisation of which will be likely to depend, in the main, on the actual working of the Constitution. The agreement also provides for a particular method of electing Depressed Classes representatives for the Legislature at the Centre. This again, in the opinion of the Government, is a subject outside the terms of the Award. As the matter was under investigation as part of the whole scheme for election for the Legislature at the Centre, the authorities thought that no piecemeal conclusion could be reached. To prevent misunderstanding, it was explained that the Government regarded the figure 18 per cent as the percentage of British India general seats at the Centre to be reserved for the Depressed Classes as a matter for settlement between them and other Hindus.

The resulting arrangement did not satisfy large bodies of public opinion. The following excerpt from an amendment to the relevant portions of the J P C Report proposed in the course of discussion in the Joint Committee, by the Marquess of Zetland and supported by among others the Marquess of Salisbury the Earl of Lytton Lord Hardinge Lord Derby Lord Rankinellour and Sir Reginald Craddock throws light on some of the issues —

Lord Zetland on the 'Award' and Pact before J P. Committee

'The original Award was strongly criticised by more than one witness who appeared before us on the ground that it must operate inequitably in the case of Bengal and it was urged that the disadvantages at which the caste Hindu would be placed under it would be greatly intensified as a result of the adoption of the Poona Pact. Particular objection was taken to the reservation of seats and the employment of separate communal electorates in a province in which the community in whose interest the reservation is made forms a majority of the population.

'The system was introduced at the time of the Minto Morley Reforms of 1909 with a view to safeguarding the interests of minorities and in particular the moslem minority and while on general grounds we may deplore the necessity for such a device we have reluctantly come to the conclusion that in existing circumstances in India the necessity persists. We do not therefore propose to elaborate the objections which may be urged against the system as a whole. But it is one thing to concede separate communal electorates for the purpose of giving minorities reasonable representation in the various legislatures, it is an entirely different thing to employ the system for the purpose of conferring upon a majority community in any particular province a permanent majority in the legislature unalterable by any appeal to the electorate. Such a course has never hitherto been adopted. It was considered and rejected by the Statutory Commission who declared that a claim submitted to them which in Bengal and the Punjab would give to the

Moslem community a fixed and unalterable majority in the general constituency seats was one which they could not entertain 'it would be unfair they wrote, 'that Muhammadans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed in face of Hindu and Sikh opposition, a definite Moslem majority in the Punjab and in Bengal unalterable by an appeal to the electorate This is the position which will arise if the distribution of seats proposed in the White Paper for the Legislative Assembly of Bengal is given effect to The Legislative Assembly is to consist of 250 seats Of these general seats 110 are to be reserved for Moslems leaving 80 for the Hindus But under the terms of the Poona Pact 30 of these 80 seats are to be reserved for the so called depressed classes, here after to be known as the Scheduled Castes, and the number of general seats open to the Caste Hindus is thus reduced to 50 It is probable that in the case of the 20 special interest seats which are open to Moslems and Hindus the great majority will fall to the Hindus but even if the Caste Hindus were to secure the whole 20 seats they would still be arbitrarily limited by statute to 70 seats in a Legislative Assembly of 250 To restrict in this way the possible share in the Government of the Province of the community which plays a predominant part in its intellectual and political life seems to us to be both unwise and unfair Before making our recommendations we have one further comment to make on the effect in Bengal of the Poona Pact The object of reserving seats for the depressed classes should be in our view, to secure to the real depressed classes that is to say the Sudras, or outcastes a voice in the legislature We believe that in Bengal the number of such people is small and we fear that the result of extending the list of scheduled castes as proposed in the White Paper, will be to defeat the object in view, for it will not then be members of the real depressed classes who will be returned for the Scheduled Caste Seats, but members of the powerful Namasudra and Rajbansi Castes who experience no difficulty in getting returned

to the legislature even now without any reservation of seats at all and whose interests are as much opposed to those of the untouchables as are the interests of the highest castes themselves.

We need not recall the circumstance, in which the so called Poona Pact was concluded. We do not think that those who were parties to it can be said to have been accredited representatives of the Caste Hindus or to have possessed any mandate to effect a settlement. We think that the arrangements for the representation of the depressed classes contained in the original Award of His Majesty's Government were preferable and we recommend their adoption.

' The effect of the changes which we propose in the scheme of the White Paper will be as follows.

- (1) To give to Moslems or to Hindus whichever is the minority community in any particular province the right to decide whether election in the case of the general territorial constituencies shall be by separate or by joint electorates.
- (2) In the case of Bengal to allot the general territorial seats between Moslems and Hindus on a population basis and
- (3) To give to the Depressed Classes in all provinces the representation given to them by the Government under their original Award before it was modified by the Poona Pact.

Revision of 'Award'

"There is one other point to which we wish to refer. Under the provisions of White Paper no change in the distribution of seats under the Communal Award is to be made during the first ten years during which the Constitution is in operation and thereafter no proposals for modification will be taken into consideration which do not carry with them the assent of the communities affected. We think that it is unlikely that such assent will be given by a community entrenched in a position of statutory superiority in the legislature and we recommend,

therefore, that it should be open to either community at the expiration of ten years to petition Parliament to modify the Award *

Discussion in Commons

The principles and details of the Communal Decision and the Poona Pact came up for a considerable amount of discussion in Parliament. A motion to restore the original 10 seats as allotted in the Prime Minister's Decision, to the Scheduled Castes in Bengal as against 30 seats as provided in the Poona Pact, moved by Mr Lennax Boyd, was vigorously supported by Sir Reginald Craddock, Colonel Wedgwood and the Duchess of Atholl. The Under Secretary of State in reply reiterated the opinion of the Joint Committee that, if by agreement between the communities concerned, "some reduction were made in the number of seats reserved for the depressed classes in Bengal, possibly with a compensatory increase in the number of their seats in other Provinces where a small revision in favour of depressed classes would not be likely materially to affect the balance of the communities in the Legislature we are disposed to think that the working of the new constitution in Bengal would be facilitated. - The motion was not accepted.

Colonel Wedgwood moved to insert in the Fifth Schedule relating to the Composition of Provincial Legislatures, "Provided that the choice as between separate and general electorates for the election of representatives to the said chambers, shall be a matter for decision by the minority community, or communities, in each Province."

Introduction of general electorate

The mover explained that the proposed change merely puts in the proviso that should a minority community in any Province decide that they can be better protected by having votes in the general electorate instead of the separate electorate, then they should be able to forfeit their position as represented by the separate electorate and become part of the general electorate, so that the majority Government and the majority members would

* Debates, House of Commons, 10th May, 1935

have to go to the minority for their votes and depend on the votes of the minority to some extent for their re-election. He cited the manner of dealing with the problem of minorities in South Africa and New Zealand and added: "From the point of view of protecting minorities there is nothing in communal representation. The real difficulty in India is that the Mohammedans demand communal representation. They put forward the plea that communal representation is to protect them in Provinces where there is for all time a Hindu majority and that in face of the Hindu Majority they have no chance unless they have communal representation. That plea I believe to be completely unfounded."

Referring to the new electoral arrangements in Ceylon introduced by an Order in Council which was drafted in accordance with the recommendation of a Commission presided over by Lord Burnham, Colonel Wedgwood said: "Ceylon is divided into even more warring castes than India. You have the Mohammedans, there the low caste Cingalese, the up-country Cingalese, the Indians who occupy a great part of the north, and the Burghers who are the half caste descendants of the Dutch and Portuguese settlers, all demanding, as the Mohammedans are doing, separate electorates in order to secure some voice in Parliament. The Commission came to the very wise conclusion that it was essential that there should be a general list in the interests of the whole of Ceylon. There is a general electorate for the whole country, subject to the condition that Mohammedans and the Burghers have two votes, one on the general list, and one on the separate list for their own community, so that their minorities are protected in both ways. They have the protection of having a separate electorate for their own representatives in the Ceylon Parliament and they have a vote on the general list so that every candidate who stands for Parliament has to go to the coloured men, the Mohammedans and Cingalese, and ask for their votes, and his programme has to be made to meet their views. Therefore you have the coloured interest represented in the Parliament of Ceylon. He concluded by saying: "I dislike communal representation most of all, not because it divides

India, as it does, for all time not because it is a bad protection for minorities but because it is bad for our reputation throughout the world. Nobody will believe that we think that communal separate electorates are good for India. Nobody in any European country—they tried it in Austria before the war, and see what an explosion it produced in that country—who knows anything about this matter thinks that it is good for India. If we put it there it will merely mean that our name will suffer as well as the name of India.

Mr Attlee in the course of his speech on this occasion said

'After all, the communal award must be based on something more than mere expediency. The award was, to a great extent, weighted on behalf of the Moslems and against the Hindus. I cannot see why the acceptance of this Amendment should be held as infringing the communal award in any degree. The purpose of the communal award is to give to minorities a certain definite protection. If you give a minority the right to say 'we will not accept this protection', I cannot see that you are infringing the Award. The real voice of communal electorates is that you tend to produce the super communalist. Any inclusion of other electorates means that the extreme communalist must consider people of other communities.'

Mr Butler in replying pointed out that the suggestion on such lines by the Simon Commission met with very adverse reception by the Moslems. The amendment was negatived.*

In the House of Lords, Lord Strabolgi in raising the question of communal electorates in connection with the Schedule dealing with the composition of Provincial Legislatures pointed out that regarding the representation of the States there was no mention of communal electorates. He observed

'The communal differences about which we hear so much now, were not very noticeable before the Montagu Chelmsford reforms, and that, as has been described to me and to other noble Lords many times, when we were seeking to find an

*Debates, House of Commons, 8th May, 1935

explanation, they have been made more acute by the scramble for loaves and fishes and that is the real explanation beneath the communal troubles

' We were told it was necessary to make this Award by the former Prime Minister now Lord President of the Council, Mr Ramsay Macdonald, in August, 1932, because the different communities could not agree among themselves as to the fractional proportion of seats they were to have in these Provincial Legislatures we are now discussing. Was there any reason at all why we should give way to that kind of pressure? If they could not agree was it for us to impose this division upon them this which I am afraid will be a permanent division? I am speaking with the greatest seriousness. Could we not have told them to come back to us when they had agreed? Could we not, above all, insist on the common electoral roll?

The Future

"I would only point out that there is a most welcome movement in India amongst the younger men against this exploitation of communal feeling for political ends. Young Moslems, young Parsees and young Hindus are beginning to come together with the ranks of Congress and other political bodies. There is, I am informed, not much communal difference or feeling in the trades unions."

Moslem demand for statutory guarantee Sec. 308

Early in July 1935 a demand was made by the All India Moslem Conference, closely following the assumption of the office of Secretary of State for India by the Marquess of Zetland, asking that the assurance that the Government would not alter the 'Award' without the consent of the communities concerned be embodied in the Act. In connection with the discussion of what is now Section 308 of the Act, laying down the procedure for proposing amendments for consideration of Parliament, there was a debate on 8th July, 1935

* Debates, House of Lords, 9th July, 1935

It was suggested that in view of the fact that the provisions in the Bill could be interpreted by a future Government in Great Britain to imply that they would alter the provisions of the 'Award even within ten years words at the end of proviso (1) sub section (4) section 308 to the effect that if without an address from the Legislatures concerned in India, action was proposed to be taken by His Majesty in Council, 'the views of the representatives in any such Legislatures of any minority likely to be so affected, should be ascertained The proposal was supported by the Marquess of Lothian

Lord Zetland's position

The Marquess of Zetland pointed out that the Bill provided for a report from the Governor General or Governor on any such proposal He, however, agreed to the proposed change but, in this connection, observed "I really do not see how the Governor General or the Governor can give his opinion upon the effect which the proposed alteration would have upon minorities without ascertaining whether the minorities approve of it or not but if there is doubt on that subject, I am quite willing to accept words such as those proposed by my noble friend behind me or at any rate, I am quite willing to consider words of that kind because I agree it is essential that Parliament should know whether the minorities do or do not approve of any change which is proposed As I have already said, no Governor General will ever be left in doubt as to whether minorities approve or disapprove of a change of that kind which is proposed affecting their interest, because they very soon make their voices heard I think the only way in which you can ascertain whether minorities wish a change to be made, or whether they do not wish it to be made is by listening to what they say *

Statutory security re. Communal Proportions

The section, as finally amended, provides for the ascertainment of 'the views of the Governments and Legislatures in India

* Debates House of Lords, 8th July, 1935

who would be affected by the proposed amendment and the views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or as the case may be, the Provincial Legislature support the proposal * both in the case where a Legislature in India presents

* When the Lords' Amendment was placed before the House of Commons the Duchess of Atholl (Con) in approving the change observed ' When the Bill left us two months ago I felt extremely anxious in regard to this Clause, and I am considerably relieved to see the Amendments which have been inserted As the Bill left us it would have been possible for the Government by Order in Council at any time after the Bill became law to propose the abolition of the special electorates and to be obliged only to ascertain the views of Governments and Legislatures, a very different matter from obtaining the assent of the communities concerned which was the pledge given in the Communal Award It is a great satisfaction to me to see how both sub section (1) and sub section (4) of this Clause have been amended in another place These Amendments, therefore, do require something very like the assent of the communities, and what is very important, these requirements are not limited merely to the provincial Legislature but also extend to the Federal Legislature, and as the communal Award contains no pledge that there should be no change in the method of election to the Federal Legislature except after 10 years or with the assent of the communities and the pledge of the communal Award only extended to provincial Legislatures—it does seem to me to be a substantial concession to minorities that any change in the Federal Legislature that may be approved either by the Legislature itself or by His Majesty's Government will be subject to the same requirement of the views of the minorities concerned as in the case of the provincial Legislatures I, therefore, sum up the amendments by saying that it seems to me that while on

an address in the matter and where the Government in Britain makes any proposal. This means that practically without the approval of a majority of members in a Legislature belonging to any minority—as all minorities are likely to be affected by any change—no change shall take place. In view of the communal electorates returning the members and the likelihood of vested interests developing around them the Lords' amendment bars the possibility of important changes quickly and smoothly. †

Mr C Y Chintamani, ex president of the Indian Liberal Federation and a veteran publicist criticises the communal distribution of seats as follows ‡

'Judged by almost no test can I consider the so called communal award to be right or wise or just. I say so called because it is really the decision of His Majesty's Government taken on the recommendation or at least with the concurrence of the Government of India. §

the one hand it may be said that the Clause now does not give in regard to the provincial authorities quite all that was originally promised, in regard to the Federal Legislature (Debates, House of Commons, July 30 1935)

† In the opinion of Mr H R. Lees Smith the "cumulative result of giving a privileged position to Moslems, Sikhs, the Depressed Classes, the Princes and the rest has finally come back like a boomerang upon the Hindu nationalist leaders. Their followers are left on the general register, which now is represented by less than one third of the members in the Federal Legislature. Even if the Nationalists sweep the whole register, they remain permanently a minority (Current History, October, 1935.)

‡ The Communal 'Award' ? What it means to the future of the whole country, pp 1—11. (Published by M N Pandey, A L J Press, Allahabad)

§ That the communal 'Award' was, in fact, the decision of His Majesty's Government was acknowledged by Sir Samuel Hoare before the Joint Parliamentary Committee in reply to questions by Sir N N Sircar. He said that the

"It is my deliberate and unalterable conviction that this communal award including and combined with the special representation of so many interests and functions, and aggravated by the arrangements made at Poona in September 1932, will make territorial, national or non communal patriotism very difficult. Parties based upon opinion as distinct from religious belief or class interest will not be easy of organisation and development in legislative bodies whose members will own so many divided allegiances and no common loyalty to one supreme entity, The People. There will be so many groups with frequently changing permutations and combinations, that an Executive responsible to the Legislature and maintained in office by an organised majority with a common political and economic policy, will be hard to get. What is far more likely to happen is that ministers will be selected each of whom, for reasons not necessarily related to public policy, will be able to command a certain number of votes, so that the aggregate so made up may suffice to keep the Ministry in office. And however it may misgovern or maladminister or betray incompetence or up trustworthiness, it can hope to remain rooted in office unless and except when disappointed ambitions will lead to discontent among the faithful, culminating eventually, if it ever will, in open revolt.

"I foresee as a consequence of this astounding communal award, increased inter communal tension outside and inside the legislatures and—the continuance of real power in the hands of our inescapable trustees of the I C S, headed by a Governor-General and Governors with many and important powers centered in them as authorities external and superior to the Governments responsible to their respective legislatures. The

Government has given their decision after the communities had failed to agree amongst themselves. He further said that whereas on other proposals in the White Paper, Government were prepared to carry on discussion, upon the proposals contained in the communal decision 'the Government have said their last word' (Q 7474 & 7478, July 7, 1934)

I C S and its worse half the I P S will be untouchable by the profane hands of mere elected vernacular ministers accountable to heterogenous legislatures. The Ministers may turn out to be smokescreens from behind which the permanent officials of a ruling caste protected by Act of Parliament and not controllable by the Government which they serve beyond a limited degree will act as they have all along done with unlimited faith in their own omniscience and with no superfluous respect for the knowledge or ability or wisdom of their nominal superiors

APPENDIX VI

Delimitation of Constituencies *

Report of the Hammond Committee (1936)

Terms of reference

The task with which the Indian Delimitation Committee was entrusted was the preparation of a complete scheme of delimitation of the constituencies whether territorial constituencies allotted to representatives of special interests, in the Legislatures to be established under the provisions of the Government of India Act. The terms of reference further contemplated the investigation of a variety of minor, but important and difficult, questions which are connected with the main problem of delimitation. The Committee note that in their instructions to them His Majesty's Government, having regard to the differences in provincial conditions, and the size of the field to be covered, deliberately refrained from any precise indication of the principles which were to govern their investigations. But they point out that due to the radical differences in provincial conditions and the importance of giving the fullest weight to provincial feeling in the details of both delimitation and the election of members to the Legislatures, they have been compelled to recognise the impracticability of applying any uniform principle even in matters

* For the material in this Appendix, the authors are indebted to the "New Constitution of India" by Lahiri and Banerji.

The Committee was appointed on July 31, 1935. The Report was issued on March 2, 1936. The Committee was composed of Sir Laurie Hammond (Chairman), Justice Sir M. Venkatasubba Rao and Mr. Justice Din Muhammad.

so important and so general in their bearing as the question of multi member or single member constituencies, the method of voting to be adopted, or the basis on which representation is to be accorded to urban and rural areas

Orders in Council

Three Orders in Council dealing with Provincial Legislative Assemblies Provincial Legislative Councils and Scheduled Castes based on the Hammond Report, were presented to Parliament on March 23, 1936 Other Orders are to follow in due course

Single vs multi member constituencies

The Committee after examining the history of the proposals for, and the arguments for and against multi member constituencies recommend that in all provinces save Bombay and Madras single member constituencies are to be accepted as a rule, save where a multi member constituency is necessitated by the reservation of seats for the scheduled castes or backward tribes In Bombay where the public demand for multi member constituencies is really strong, the principle of multi member constituencies may be accepted A certain number of multi member constituencies, containing not more than two unreserved seats, may be created in Madras *

Three methods of voting discussed

The Committee discuss the three main alternative methods of voting (excluding the system of the single transferable vote

* On the representation of the Government of Madras, supported by the Government of India, His Majesty's Government provide in the Provincial Assemblies Order-in-Council presented to Parliament on March 23, 1936, that all territorial constituencies in Madras shall be single member except in those cases where a seat is to be reserved for the scheduled castes and in six other cases, and that such plural constituencies, as will thus remain, shall be two-member constituencies

which they do not regard as suitable for adoption in present day conditions in India), viz — (a) the single non transferable vote (b) the distributive vote, free or compulsory , and (c) the cumulative vote

Under the first system, a voter has one vote only which he can cast for any of the candidates who seek his suffrage, but he can of course cast it in favour of one candidate only. The case for the general adoption of the single non transferable vote, on the ground that it was only in this way that minorities could feel any confidence that they would receive an adequate degree of representation, was very strongly urged on the Committee in a memorandum communicated to them by the Proportional Representation Society of England

Under the distributive system of voting, the elector has as many votes as there are seats but can give one vote only to any one candidate. Under the cumulative system, the elector has as many votes as there are seats, but may plump them all for one candidate, or distribute them over two or more candidates as he may desire. This is the existing system in Bombay, and it is certainly much simpler administratively than the distributive system which is in force in Madras. In addition, it gives the elector the utmost liberty. His freedom is unfettered. This is entirely denied him in the single non transferable vote, and only partially allowed by the distributive vote

Committee's recommendation

The Hammond Committee recommend that save as otherwise stated, cumulative voting shall be adopted in all multi-member territorial constituencies and the single non transferable vote in the Bihar general constituencies, where a seat is reserved for the backward tribes as also in the Berhampur constituency in Orissa and the Singhbhum constituency in Bihar

Scheduled caste constituencies

Regarding the scheduled caste constituencies and the Poona Pact, the Committee observe that (I) the number four

is neither a maximum nor a minimum, but an optimum,* (II) withdrawals shall not be allowed (III) except in Bengal, there is to be no restriction on a member of the scheduled castes from contesting an unreserved seat in a constituency where there is a reserved seat. In Bengal however, no member of the scheduled castes not elected at the primary election is qualified to contest a seat in a constituency where there is a general seat reserved for the scheduled castes.

The method of voting in general constituencies containing reserved seats for the scheduled castes is to be cumulative ?

It is desirable' state the Committee, 'that there should be five or more candidates at the primary election, but it is in no wise compulsory "

† "The Poona Pact lays down that the voting at primary elections for the scheduled castes shall be by no means of the single non transferable vote, and the question for decision is whether the same system should, as recommended by the Proportional Representation Society, be adopted in the case of final elections in these constituencies. We have given most careful consideration to this question, which is of great importance as affecting the working of the Poona Pact. As a result, however, we have reached the unhesitating conclusion that whatever the merits of the single non transferable vote as an electoral device, and however convenient it may be for administrative purposes, its adoption at final elections, in constituencies in which seats are reserved for the scheduled castes, would be contrary to the spirit of the Poona Pact. The objections of principle which we see to the adoption of this method of voting in the case of the scheduled caste constituencies, are shared by representative members alike of the caste Hindus and of the scheduled castes.' (Delimitation Committee's Report, Vol I, p 19)

The Committee's recommendations, in connection with the scheduled castes, came in for a great deal of criticism when the Indian Legislative Assembly considered the Report

If two panel candidates head the polls at the final election the first is to be declared elected to the reserved seat and the second to the non reserved seat. Summary trials of petitions connected with a primary election are to be held by District Magistrates and disposed of summarily.

The decision will not be liable to be set aside either by any court or any higher executive authority. The disqualification of any person on account of corrupt practices shall be capable of removal by the Governor. The deposit $\frac{1}{2}$ which will cover

Dr P N Banerjee said that the cumulative vote was against the spirit of the Poona Pact and would in effect constitute separate electorates. It was on this issue that Mr Gandhi had gone on a fast.

Rao Bahadur M C Rajah, representing the depressed classes, quoted the views of various depressed class witnesses before the Hammond Committee, the majority of whom had either favoured the single non transferable vote or the distributive vote. Even Dr Ambedkar though supporting the cumulative vote, had admitted, that his experience was restricted to Bombay. Mr Rajah challenged the Committee's claim that its recommendation was in accordance with the views of the leaders of the community. The cumulative system meant that neither a caste candidate nor a depressed class candidate would try to seek the other community's vote causing thereby the Hindu community to split and disintegrate. He also objected to the remark in the Report that executive orders might be issued to district officers in order to encourage and facilitate the candidature of depressed class men. Mr Rajah thought that this remark was against democracy and was liable to damage the work of depressed class associations and to make the District Magistrate the election agent of certain candidates spending even money for them. (Debates Indian Legislative Assembly, February 6, 1936)

$\frac{1}{2}$ It is necessary to preclude freak candidates and yet not place the deposit so high as to discourage the genuine candidate. (Chapter V, Hammond Report)

both the primary and final elections by scheduled caste candidates is to be Rs 50 the deposit for demanding a summary trial Rs 250 the deposit for questioning the validity of the final election Rs 1000 Scheduled Caste candidates shall have also to file a return of election expenses

In Madras out of 30 scheduled caste seats one seat has been allotted to a constituency in the City of Madras and the remaining 29 seats to rural areas In Bombay 15 seats are reserved for the scheduled castes The Committee have allotted two to the City of Bombay and 13 to rural areas In Bengal all the 30 seats are assigned to rural areas in five constituencies two seats are reserved for the scheduled castes

Four out of the 20 seats reserved for the scheduled castes in the U P have been allotted to Lucknow Cawnpore Agra and Allahabad The remaining 16 are allotted to rural areas where the scheduled castes preponderate

In the Punjab Bihar Assam and Orissa all the scheduled caste seats are reserved in rural constituencies *

In the C P the only urban seat allotted to the scheduled castes is for Nagpur City

Urban vs rural constituencies

The problem of urban versus rural areas was raised in Parliament and was specially referred to in the Committee's terms of reference The Committee find that a basis for distinguishing urban from rural areas is impracticable To secure uniformity the only course open was to deal with each province individually securing that the proposals put forward (i) had the support of the decided bulk of public opinion (ii) were so framed that rural areas would not be dominated by urban elements (iii) ensured that urban areas received the full representation to which they were entitled and in any case in which weightage was given to urban areas that weightage was not

* The Scheduled Castes Order provides for an increase of the scheduled castes electorates in Madras, the United Provinces, Bihar and Orissa

greater than was appropriate and (iv) were void of conspicuous anomalies.

Principles governing distribution of territorial constituencies

On the question of territorial constituencies, the Committee consider that the question of fundamental importance in connection with delimitation is, of course, the delimitation of the territorial communal constituencies allotted to the general, the Muhammedan, and the Sikh population. On the satisfactory delimitation of these constituencies, and the proper balancing of interests, whether general or local, in framing proposals for them, must inevitably depend the smooth and satisfactory working of the new Constitution. The general basis of the proposals of the Committee in this matter, is to work upon the recognised administrative units, whether the tahsil, the thanna, the taluq, the district, or the division. The Committee have adopted the principle that it is undesirable in any case to reduce the number of seats assigned in the existing Legislative Councils. Broadly speaking, the Committee have, as a rule, taken population as the general basis of their proposals. After discussing the proposals of various local Governments they make the following distribution

Madras

To Madras the Committee have assigned 15 general and two Muhammedan seats to urban areas, the basis for inclusion in urban areas being a combination of not more than two towns of a substantial size in the same district. The Committee have recommended two multi member urban constituencies and a certain number of multi member rural constituencies, the constituencies ordinarily containing not more than two unreserved seats *

* As already noted His Majesty's Government have altered the Committee's proposals regarding multi member constituencies in their Order on the subject

Bombay

In Bombay, fourteen general seats and six Muhammedan seats have been allotted to urban areas. Only the biggest cities, which have genuinely urban characteristics and whose problems and interests are different from or likely to conflict with those of the areas classed as rural, have been included in the urban category.

Bengal

In Bengal, all municipalities which are subject to the provisions of the Bengal Municipal Act and the Calcutta Municipal Act, the Cantonment of Barrackpore and the town of Khargpur, which is not enjoying municipal self government, are included in the general urban areas and only selected municipalities in the Muhammedan urban constituencies. Twelve general and six Muhammedan seats have been assigned to urban representation.

U P

In the United Provinces the basis for inclusion in urban areas is towns with a population of 25 000 and over, the number of seats allotted to urban areas is general, 13 and Muhammedan, 13.

Punjab

In the Punjab the number of seats allotted to urban areas is general eight Muhammedan nine and Sikh two, the basis for inclusion in urban areas being all towns with a population of not less than 7 500, cantonments and district headquarters and first class municipalities.

Bihar

In Bihar the number of seats allotted to urban areas is general five and Muhammedans five, the basis for inclusion being all municipal, notified and cantonment areas.

C. P

In the Central Provinces and Berar, the number of seats allotted to urban areas is general ten and Muhammedan two, the

basis for inclusion being all municipalities and towns with a population of 10,000 and over. The number of seats allotted to the Central Provinces is general 64 and Muhammedan 6. The number of seats allotted to Berar is general 20 and Muhammedan 6.

Assam

In Assam, the number of urban constituencies in the Assam Valley is general 32 and Muhammedan 13. Surma Valley, general 15 and Muhammedan 21.

N. W. F.

In N. W. F. Province, the number of seats allotted to urban areas is general three and Muhammedan three.

Orissa & Sind

In Orissa there is no urban constituency.

In Sind, the number of seats allotted to urban areas are, general three and Muhammedan two, the basis for inclusion in the urban areas being the bigger cities.

The Indian Franchise Committee* indicated that they thought it preferable that the representatives of women in the provincial legislatures should be returned from seats set apart for women in selected urban areas, the electors belonging to that area, both men and women, the voters having in such areas two votes, one in the ordinary territorial constituency for which they were qualified, and the other for a woman candidate. The Joint Committee expressed themselves also in favour of the reservation of seats in constituencies formed for the purpose and containing both men and women. They added that they were inclined to think it desirable that those constituencies should be both urban and rural, and that they saw no objection to the area being varied by rotation should this prove to be desirable and practicable. The Hammond Committee is definitely in favour of allotting all the seats reserved for women in Provincial Legislative Assemblies to special

* Report paras, 218-220

constituencies. They state "Our reasons are the following. In the first place, we cannot but regard the special representation which has been provided for women in the provincial Assemblies as to some extent in the nature of an ad hoc provision, the importance of which will be particularly marked during the early years of the new Constitution. These constituencies will be both experimental and educative. At present in one of two provinces, and in some influential quarters there is a distinct prejudice against women's active participation in public life. In all, there is among women as a whole at present but little political consciousness. There is no familiarity with parliamentary institutions. The object, we conceive of these special seats for women is to ensure that, pending an improvement, women shall not go unrepresented in the legislatures". The Committee do not support the system of rotation as, in the opinion of the Committee, "it is a question not so much of depriving a particular area of the vote as of bestowing a privilege on an area selected as best suited for the purpose".

Universities

The Committee recommend enfranchisement in the University constituencies of members of the Senate or Court

*The Provincial Assemblies Order in Council generally provides that the election to seats reserved for women shall be in most Provinces by special territorial constituencies consisting of voters, both men and women. Provision however, is made for the Punjab, and Sind, in addition to Bengal and Bihar, to confine the electorate for seats allotted to Muhammadan women only.

The Provincial Electoral Orders in Council have removed for Madras also, as had already been recommended for other Provinces, the necessity, at the first elections, for application by women who are entitled to be registered on their husband's qualification.

and all registered graduates of not less than seven years' standing

Landholders

In all provinces, except the U P territorial constituencies have been formed for the filling of seats allotted to landholders Four will be filled by the British Indian Association (U P) and two by the Agra Zamindars Association For the purposes of election membership will, in the U P, be confined to persons paying land revenue of not less than Rs 10,000 per annum

Principles of delimitation of Commerce seats

The Committee base their recommendation for commercial representation on three general principles First, that the membership of an association should be deemed a more appropriate qualification Secondly, that out of a number of competing bodies, such alone should be selected, as truly represent substantial commercial interests Thirdly, that *attempts should be made to concentrate on a single authoritative body, wherever possible and avoid in any event combining unrelated or dissimilar organisations* The distribution of such seats in some of the provinces is given below

Madras

In Madras four seats have been allotted to European commerce and two to Indian commerce The Madras Chamber of Commerce and the Madras Trades Association will between them have three seats, the Madras Planters, the Southern Indian Chamber of Commerce and the Nuttukottai Nagrathar's Association will each have one seat The Andhra Chamber of Commerce have not been enfranchised

Bombay

In Bombay the existing arrangements will continue and the East India Cotton Association will have the seventh seat The Bombay Chamber of Commerce and the Bombay Trades Association will between them have a three member constituency with one seat reserved for the Bombay Trades Association

Bengal

Bengal is given 14 European and 5 Indian seats. Of the five Indian seats, two have been assigned to the Bengal National Chamber of Commerce and one each to the Indian Chamber of Commerce, the Marwari Association and the Muslim Chamber of Commerce.

U. P.

The seat allotted to Indian Commerce in the U P is to be shared by the U P Chamber of Commerce and the Merchants Chamber, U P.

Punjab, Bihar, C.P., Orissa and Sind

The electorate for the Punjab commerce seat is to be composed of the Northern India Chamber of Commerce, the Punjab Chamber of Commerce, the Punjab Trades Association and the Indian Chamber of Commerce. In Bihar, the three existing constituencies are to continue and the new fourth seat will be filled by the Bihar Chamber of Commerce. In the C P, Orissa and Sind the Committee recommend the formation of constituencies comprising companies, firms and individuals possessing certain qualifications.

Assam

Of the eleven seats allotted to Assam nine (seven European and two Indian) have been assigned to planting (tea) and two (One European and one Indian) to commerce and industry. Regarding the two commerce and industry seats, the Committee recommend special constituencies consisting of companies, firms and individuals, covering the whole Province there being separate electorates for Europeans and Indians.

Labour seats

Regarding labour seats the Committee have accepted the principle laid down by the Joint Select Committee that constituencies for the labour seats shall partly be in organized labour constituencies and partly in unorganized labour constituencies. The Committee have achieved this in all cases except in

Orissa and Sind. The Trade Unions have been given two seats in Madras, six in Bombay, two in Bengal and one each in the U.P., the Punjab and the C P*. The remaining 24 seats have been assigned to unorganized labour. All the four seats in Assam and one seat in Bengal have been assigned to tea garden labour. In the case of tea garden labour the Committee have accepted the principle of rotation for the sake of obtaining direct election. The Committee also recommend that the existing trade union law be so amended as to invest local governments with the power of inspecting the registers of the trade unions and to make Government or professional audit of their accounts compulsory.

Labour Tribunal

Tribunals, as suggested by the Royal Commission on Labour and supported by the Indian Franchise Committee, may be constituted by the Governor, acting in his discretion. This tribunal is to make an yearly review of the labour constituencies. The qualifications of a trade union for inclusion in the electorate for the trade union constituencies are (i) that it has been in existence for two years and was registered for one year before the date fixed for the preparation of the electoral roll, (ii) that its membership during the year preceding the preparation of the roll was not below 250 (iii) that it has complied with any rules under the Trade Union Act for the inspection of books (iv) that the preceding conditions have been attested by the Tribunal.

*In the course of the debate in the Indian Legislative Assembly, Mr N M Joshi, nominated member to represent Labour interests, complained that the Hammond Report was unfair to labour in several respects. He suggested an amendment of the report to ensure that all labour seats be filled through trade unions except in Assam where such unions did not exist. Secondly, a railwayman who had his union registered in a Province other than where he resided, should, in Mr. Joshi's opinion, be enfranchised.

Electoral registers for the trade union constituencies are to be confined to the province in which the trade union is registered. Where the election is to be indirect the electoral roll is to be prepared by the employer.*

Backward areas and Tribes

Four out of the five seats allotted to the backward areas and tribes in Orissa are to be filled by nomination. Such seats assigned to Bombay and Bihar and the remaining seat in Orissa are to be filled by direct election from multi member general constituencies having one seat reserved for the backward tribes. Madras the Central Provinces and Assam are to have special to be four seats for the backward tribes and five for the backward areas.

Provincial Councils

The Proposals of the local Governments in regard to the delimitation of constituencies of Provincial Legislative Councils have been accepted.

Federal Legislature

Recommendations have been made with regard to some of the special types of seats in the Federal Legislature.

Federal Commerce Non Provincial Seat

The Associated Chambers of Commerce of India and Federation of Indian Chambers of Commerce shall each have one seat in the Assembly and the electorate for the third seat allotted to Northern Indian Commercial bodies shall be the Northern India Chamber of Commerce the Punjab Chamber of Commerce and the Upper India Chamber of Commerce. In regard to provincial and special seats allotted to the Federal

*The Provincial Assemblies Order provides that in case of indirect election votes should be cast by delegates specially elected for the purpose, and not by the executive of Unions as the Bengal Government proposed.

Legislature, the recommendations of local Governments are accepted

Federal Labour Seats

The seat assigned to Assam Labour in the Federal Assembly is to be filled by direct election from a tea garden constituency to be chosen in rotation by the Governor in his discretion from one of the tea garden constituencies for the Labour seats in the Assam Legislative Assembly. The non provincial seat is to be assigned to the *National Trades Union Federation* or such other organisation of workers as may be selected by the Government of India for nomination of the workers' delegate to the International Labour Conference under the provisions of Article 389 (3) of the Treaty of Versailles

Chief Commissioners' Provinces

Seats allotted to the *Chief Commissioners' Provinces*, in the Federal Assembly, are to be filled by direct election, in the case of Delhi and Ajmer Merwara. The Coorg Legislative Council will elect the member for Coorg to the Federal Assembly. The seat assigned to British Baluchistan is to be filled by nomination by the Governor General

Federal Council of State

The recommendations of the Local Governments as to the constituencies of the Federal Council of State are accepted

In regard to the conduct of election, the Committee recommend (1) simplification of procedure for nomination and scrutiny by the returning officer, (2) the returning officer or the presiding officer to be given powers to correct obvious and minor mistakes in the electoral roll

Conduct of elections

The Committee recommend the establishment of an Elections Department for the revision of an electoral roll at any time, and the framing of an Election Manual and rules to avoid unnecessary challenging of voters

Corrupt practices

The Committee also recommend that (1) personation is to be a cognizable offence (ii) the rule regarding hiring of conveyances is to be abrogated and the expenditure on this account is to be included in the return of election expenses (iii) there is to be no change in the existing law relating to corrupt practices

APPENDIX VII

Provisions as to Franchise

Part I

General

1 There shall be an electoral roll for every territorial constituency and no person who is not, and except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency

2 The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date", as may be directed in each case by the Governor, exercising his individual judgment

3 No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either —

- (a) a British subject, or
- (b) the Ruler or a subject of a Federated State, or
- (c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State

4 No person shall be included in the electoral roll for, or vote at any election in any territorial constituency if he is of unsound mind and stands so declared by a competent court

5 No person shall be included in the electoral roll for a Sikh constituency, a Muhammedan constituency, an Anglo-Indian constituency or an Indian Christian constituency unless he is a

Sikh, a Muhammedan, an Anglo Indian, a European or an Indian Christian as the case may be

6 No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Muhammedan constituency, Anglo Indian constituency, European constituency or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province, or vote at any election to fill a general seat therein

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats

7 No person shall in any Province vote at a general election in more than one territorial constituency, and in each Province such provision if any as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in the Province

Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed

8 No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included

9 No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment.

10 The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

- (a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall notwithstanding anything in the subsequent provisions of this Schedule continue to be on the roll for that constituency unless *she remarries or becomes disqualified* under the foregoing provisions of this Schedule for inclusion in that roll
- (b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner

Provided that, if a woman who is entitled by virtue of sub paragraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate

11 For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Schedule be left out of account

12 This Schedule shall have effect as if any reference therein to an officer, non commissioned officer, or soldier of His Majesty's regular military forces included a reference to an officer or man of any British India police force not being an officer or man who has been dismissed or discharged from that force for disciplinary reasons and a reference to an officer, non commissioned officer or soldier of the Auxiliary Force (India) or the Indian Territorial Force, not being an officer, non commis-

sioned officer or soldier who has been dismissed or discharged from the force for disciplinary reasons, or has served in the force for less than four years

13 — 1) In this Schedule except where the context otherwise requires—

"territorial constituency" means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to this Act

"European", "Anglo Indian", "Indian Christian" and "Scheduled Castes" have the same meanings respectively as they have in Part I of the First Schedule to this Act,

"Indian Christian constituency" does not include any constituency which may be formed for choosing persons to fill the Indian Christian seat in Bihar,

"person" does not include a body of persons,

"prescribed", except in the phrase "the prescribed date", has the same meaning as in the Fifth Schedule to this Act.

"previous financial year", "previous Bengali year" and "previous fash year" mean, respectively, the financial year, the Bengali year, and the fash year immediately preceding that in which the prescribed date falls

"house" and "building" include, respectively, a part of a house or building separately occupied as a dwelling or for the purposes of any trade, business, or profession,

"literate" means, in relation to any person, able to read and write in some language or dialect selected by him being a language or dialect in common use in some part of India

"cantonment" means a cantonment for the purposes of the Cantonment Act, 1924 and "cantonment record" means a record prepared under that Act

(2) Any reference in this Schedule to "urban constituencies" or "rural constituencies" shall be construed as a reference to such territorial constituencies as may be classified as urban or rural constituencies, respectively, by an Order in Council delimiting territorial constituencies

Provided that any such Order in Council may direct that any Anglo Indian constituency, European constituency, or

Indian Christian constituency shall be deemed to be an urban constituency for some purposes and a rural constituency for other purposes

(3) Any reference in this Schedule to persons assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm assessed to income tax in that year if his share of the firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable

(4) If any question arises under this Schedule whether any person is or is not a Sikh, he shall be deemed to be a Sikh if and only if he makes in the prescribed manner a declaration in the prescribed form that he is a Sikh

(5) Any reference in this Schedule to a retired, pensioned or discharged officer non-commissioned officer or soldier of any force shall be deemed not to include a reference to any person who has been dismissed or discharged from that force for disciplinary reasons

(6) Any reference in this Schedule to all or any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted

(7) If the boundaries of any district or other administrative area mentioned in this Schedule are altered, any reference in this Schedule to that district or area shall thereafter be taken as a reference to the district or area as altered

Part II

Madras

GENERAL REQUIREMENT AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year

A person is deemed to reside in a house if he sometimes uses it as a sleeping place and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

QUALIFICATIONS DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he—

- (a) paid tax under the Madras Motor Vehicles Taxation Act 1931 for the whole of that year or
- (b) paid for both the half years of that year to a municipality local board or cantonment authority in the Province profession tax under the Madras City Municipal Act 1919 the Madras District Municipalities Act, 1920 the Madras Local Boards Act, 1920 or the Cantonments Act, 1924 or
- (c) paid for both the half years of that year to a municipality or cantonment authority in the Province property tax under any of the said Acts, or
- (d) paid for both the half years of that year house tax under the Madras Local Boards Act 1920, or
- (e) occupied as sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph or
- (f) was assessed to income tax

QUALIFICATIONS DEPENDENT ON PROPERTY, &c.

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was on the last day of the previous fasli year a registered land holder inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908 or
- (b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province or
- (c) was throughout the previous fasli year a kanamdar or kushikanamdar or the holder of a kudiyaruppu or a verumpattamdar having fixity of tenure each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929 or
- (d) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural constituency of not less than fifty rupees

- 4 —(1) Sub paragraph (a) of the last preceding paragraph shall not apply in relation to registered joint land holders, registered joint inamdars, registered joint ryotwari pattadars or registered joint occupancy ryots but in relation to such persons (being persons so registered on the last day of the previous fasli year) the following provisions of this paragraph shall have effect
- (2) Where the joint holding of any joint landholders or joint holders of a whole inam village is of an annual rental of one thousand rupees or upwards, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this part of this Schedule one registered joint holder for every complete five hundred rupees of the annual rental of the joint holding shall be qualified to be included in the electoral roll of the appropriate territorial constituency

ADDITIONAL QUALIFICATIONS FOR WOMEN

8 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) If she is the pensioned widow or the pensioned mother of a person who was an officer, non commissioned officer, or soldier of His Majesty's regular military forces or
- (b) if her husband possesses the qualifications requisite for the purpose of this paragraph

9 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) was assessed in the previous financial year to income tax or
- (b) is a retired, pensioned or discharged officer non commissioned officer or soldier of His Majesty's regular military forces or
- (c) occupied for not less than six months in the previous financial year a house in the City of Madras the annual value whereof was not less than sixty rupees, not being a house in any military or police lines, or
- (d) was assessed in the Province in the previous financial year to tax on companies, or
- (e) was assessed in the Province in the previous financial year to an aggregate amount of not less than three rupees in respect of either or both of the following taxes, namely, property tax or profession tax, or
- (f) is registered as a ryotwari pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees or
- (g) holds under a ryotwari pattadar or an inamdar a registered lease of land the annual rent value whereof is not less than ten rupees, or
- (h) is registered jointly with the proprietor under section fourteen of the Malabar Land Registration Act, 1895,

as the occupant of land the annual rent value whereof is not less than ten rupees, or

- (1) is a landholder holding an estate the annual rent value whereof is not less than ten rupees or
- (2) holds as ryot, or as tenant under a landholder land the annual rent value whereof is not less than ten rupees

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

10 No person shall, by virtue of sub paragraph (e) of paragraph two sub paragraph (c) or sub paragraph (d) of paragraph three, paragraph five paragraph six, or paragraph eight, of this part of this Schedule be included in the electoral roll of any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included

Provided that except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act this paragraph shall, as respects women qualified by virtue of their husbands qualifications have effect only where the husband's qualification is that mentioned in sub paragraph (b) of paragraph nine of this part of this Schedule

GENERAL PROVISIONS AS TO JOINT PROPERTY &c

- 11—(1) Subject to the provisions of this paragraph, property held and payments made jointly by and assessments made jointly on more than one person shall be left out of account for the purposes of this Part of this Schedule

(2) Where any such property payments or assessments would qualify a person if they had been made by or on him solely then subject to the provisions of Part I of this Schedule, and of any overriding provisions of this Part of this Schedule one of these persons shall be qualified in respect of the property, payment or assessment and that person shall be—

- (a) if the property is held, or the payments or assess-

ments made, by or on a Hindu joint family, the manager thereof,

- (b) if the property is held or the payments or assessments made by or on any other joint family, the member thereof authorised in that behalf by the family themselves,
- (c) in any other case, the person authorised in that behalf by a majority of the persons by or on whom the property is held or the payments or assessments made.

(3) Nothing in this paragraph affects paragraph four of this Part of this Schedule, or the provisions of Part I of this Schedule relating to partners in firms assessed to income tax

INTERPRETATION &c

12—(1) In this Schedule in relation to Madras—

"estate" means an estate as defined in the Madras Estates Land Act, 1908,

'fash year' means a year ending on the thirtieth day of June,

"landholder" means a person owning an estate or part of an estate and includes every person entitled to collect the rent of the whole or part of an estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court, or of any provision of law,

'rent value' means the value as determined in accordance with the provisions of section seventy-nine of the Madras Local Boards Act 1920, with reference to the accounts of the previous fash year or, in any case in which it is not possible so to determine the rent value, such value as appears to the registration officer to be the rent value,

"tenant" includes all persons who whether personally or by an agent occupy a house or land under the owner or landholder or intermediate landholder, as the case may be, except that it does not include any

person occupying a house in military or police lines rent free by virtue of any office, service or employment

(2) A person who is paying or is liable to pay the rent of a house shall be deemed to occupy it

PART III

Bombay

GENERAL REQUIREMENT AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence —

- [a] in relation to a Bombay city constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in the city of Bombay or in the Thana mahal or the South Salsette taluka
- [b] in relation to any other urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof
- [c] in the case of a rural constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in a contiguous constituency of the same communal description

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European or Anglo Indian territorial constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease

to reside in a house merely because he is absent from it or has another dwelling in which he resides if he is at liberty to return to the house at any time and has not abandoned his intention of returning

QUALIFICATIONS DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax

QUALIFICATIONS DEPENDENT ON PROPERTY

3 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he —

- (a) holds in his own right, or occupies as a tenant, alienated or unalienated land or land on talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue or
- (b) is the alienor of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency or
- (c) is a khot or sharer in a khoti village in the constituency, or a sharer in a bhagdari or narwadari village in the constituency, and is responsible for the payment of not less than eight rupees land revenue or
- (d) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal district, cantonment or notified area and having at least the appropriate value

In sub paragraph (d) of this paragraph, the expression "the appropriate value" means—

- (i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees,

- (ii) in relation to a house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees,
- (iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees

EDUCATIONAL QUALIFICATION

4 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving certificate examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular forces

ADDITIONAL QUALIFICATION FOR WOMEN

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- [a] if she is the pensioned widow or the pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces, or
- [b] if she is shown in the prescribed manner to be literate, or
- [c] if her husband possesses the qualifications requisite for the purposes of this paragraph

7 A husband shall not be deemed to possess the

qualifications requisite for the purpose of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—

- [a] in the previous financial year, he was assessed to income tax or
- [b] he is a retired pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces or
- [c] in the constituency he holds in his own right or occupies as tenant alienated or unalienated land or land on talukdari tenure assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch Mahals sub division of the Broach and Panch Mahals district or in the Ratnagiri district, or not less than thirty two rupees land revenue elsewhere or
- [d] he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch Mahals sub division of the Broach and Panch Mahals district or in the Ratnagiri district and to not less than thirty two rupees elsewhere or
- [e] he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment in the Panch Mahals sub division of the Broach and Panch Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere not less than thirty two rupees land revenue or
- [f] he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay

or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value

In sub paragraph [f] of this paragraph, the expression "appropriate value" means—

- [i] in relation to a house or building in the city of Bombay an annual rental value of one hundred and twenty rupees
- [ii] in relation to a house or building in the Panch Mahals sub division of the Broach and Panch Mahals district or the Ratnagiri district situate in an area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of twenty four rupees,
- [iii] in relation to any other house or building in the Panch Mahals sub-division of the Broach and Panch Mahals district or the Ratnagiri district, a capital value of one thousand rupees,
- [iv] in relation to a house in any other area in which any tax is based on the annual rental value of thirty six rupees and
- [v] in relation to any other house or building, a capital value of one thousand five hundred rupees

SPECIAL QUALIFICATION FOR SCHEDULED CASTES

8 Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if either—

- (a) he is shown in the prescribed manner to be literate or
- (b) he was at any time during the year ending on the thirty first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not,

Provided that a person who has been dismissed for misconduct and has not been re employed shall not by virtue

of sub paragraph (b) of this paragraph be qualified to be entered in any electoral roll

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

9. No person shall by virtue of paragraph four or of paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, *on his behalf, that he should be so included*

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub paragraph (b) of paragraph seven of this Part of this Schedule.

PROVISIONS AS TO JOINT PROPERTY &c.

10—(1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land shall, in relation to any persons who are co sharers in such land, property rent or land revenue, be construed as a reference to the respective shares of those persons

(2) Where two or more persons occupy any house the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons.

(3) Where property is owned, held or occupied or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held, occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and, in other cases, the member authorised in that behalf by the family themselves.

Save as aforesaid any property owned held or occupied or payments made jointly by or assessments made jointly on the members of a joint family shall be left out of account for the purposes of this Part of this Schedule

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax

INTERPRETATION &c.

11—(1) In this Schedule in relation to Bombay—

holder means a person lawfully in possession of land whether his possession is actual or not and hold shall be construed accordingly

tenant means a lessee whether holding under an instrument or under an oral agreement and includes a mortgagee of a tenant's rights with possession and, in relation to a house not situate in military or police lines also included any person occupying the house rent free by virtue of any office service or employment

Bombay city constituency means a constituency comprising any part of the city of Bombay

(2) The value of any machinery furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land regard shall be had to the average of assessment on assessed land in the same village or, if there is no such land in the same village the average rate of assessment on assessed land in the nearest village containing assessed land

Part IV

Bengal

GENERAL REQUIREMENT AS TO RESIDENCE

1—(1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he

has a place of residence in that constituency:

Provided that—

- (a) in the case of a Calcutta constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he has a place of residence in Calcutta and a place of business within the constituency,
- (b) in the case of a European constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Bengal but is absent from Bengal on leave from his employment.

(2) in this paragraph "a place of residence" means a place where a person ordinarily and actually resides during the greater part of the year.

QUALIFICATIONS DEPENDENT ON TAXATION

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) has paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year, or
- (b) was assessed during the previous year to income tax; or
- (c) was during the previous year entered in the municipal assessment book or licence register, or any other authorised register maintained by the corporation of Calcutta, as having paid in respect of that year either directly or indirectly any sum as consolidated rate, tax or licence fee to the corporation; or
- (d) has paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than eight annas, or road and public works cesses under the Cess Act, 1880, of not less than

eight annas, or Chaukidari tax under the Village Chaukidari Act, 1870, of not less than six annas, or union rate under the Bengal Village Self-Government Act, 1919, of not less than six annas

QUALIFICATIONS DEPENDING ON PROPERTY

3 Subject as aforesaid a person shall also be qualified to be included in the electoral roll of any territorial constituency if at any time during the previous financial or Bengali year he has occupied by virtue of his employment a house in the Province the annual valuation of which is not less than forty two rupees.

In this paragraph "annual valuation" means the annual rental of the house as ascertained from any accounts of the employer of the person in question which are required by or under any law to be regularly audited or, if the annual valuation is not so ascertainable, one tenth of the annual remuneration received by the person in question for the employment by virtue of which he occupies it.

EDUCATIONAL QUALIFICATION

4 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation examination of any prescribed university, or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed, any other prescribed examination, not lower than a final middle school examination

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces

ADDITIONAL QUALIFICATIONS FOR WOMEN

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial

al constituency if she is the pensioned widow or the pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate

Provided that in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words or if she is shown in the prescribed manner to be literate were omitted therefrom

7 In relation to a Calcutta constituency a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he was during the previous year entered in the municipal assessment book as the owner and occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than one hundred and fifty rupees per annum or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum and paid during that year his share of the consolidated rate on the land or building or
- (b) he has paid during and in the respect of the previous year on his sole account and in his own name not less than twenty four rupees either in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923 or
- (c) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty four rupees was paid in the previous year in respect of the consolidated rate.

8 In relation to an urban constituency which is not a Calcutta constituency a husband shall be deemed to possess the qualifications requisite for the said purposes if during and in respect of the previous year he paid in the municipality of Howrah municipal taxes or fees of not less than three rupees or in any other municipal area or cantonment in the Province municipal or cantonment taxes or fees of not less than one rupee eight annas

9 In relation to a rural constituency a husband shall be deemed to possess the qualifications requisite for the said purposes if during and in respect of the previous year he paid not less than one rupee eight annas in respect of municipal taxes or fees or not less than one rupee in respect of road and public works cesses under the Cess Act 1880 or not less than two rupees in respect of Chaukidari tax under the Village Chaukidari Act 1870 or in respect of union rate under the Bengal Village Self Government Act 1919

10 In relation to any territorial constituency a husband shall be deemed to possess the qualifications requisite for the said purposes if he either is a retired pensioned or discharged officer non commissioned officer or soldier of His Majesty's regular military forces or was assessed in the previous year to income-tax or paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act 1932 in respect of that year

SPECIAL PROVISIONS AS TO DARJEELING GENERAL CONSTITUENCY

11 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any rural general constituency comprising any part of the Sadar Kalimpong and Kurseong sub divisions of the Darjeeling district if that person either—

- (a) has paid during and in respect of the previous year rent of not less than twenty rupees for any land in the Province situate in a municipal area or for any hired building in the Province or rent of not less than

two rupees for any land in the Province not situate in a municipal area, or

- (b) is the wife of a person who, during and in respect of the previous year, has paid rent of not less than sixty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than six rupees for any land in the Province not situate in a municipal area

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

12 No person shall by virtue of paragraph three or paragraph four of this Part of this Schedule be included in the electoral roll of any territorial constituency, unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf, that he should be so included

SPECIAL PROVISIONS AS TO MUHAMMADAN WOMEN'S CONSTITUENCY

13 No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women.

INTERPETATION, ETC

14—(1) In this Schedule, in relation to Bengal,—

"Calcutta" means Calcutta as defined in paragraph 11 of section three of the Calcutta Municipal Act, 1923,

"a Calcutta constituency" means, subject to the provisions of this paragraph with respect to Anglo-Indian constituencies, European constituencies or Indian Christian constituencies, a constituency which comprises any part of Calcutta,

"previous year" means part of previous financial year or the previous Bengali year, whichever is appropriate in the particular case,

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra.

(2) Notwithstanding anything in this paragraph, an Order in Council delimiting territorial constituencies may provide that any Anglo Indian constituency, European constituency or Indian Christian constituency comprising any part of Calcutta, shall, for all or any of the purposes of this Part of this Schedule, be deemed not to be a Calcutta constituency

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves

Provided that this paragraph shall not apply where members of a joint family have separate accommodation and separate means and in any such case any reference in this Part of this Schedule to any property, payment or assessment shall be construed as a reference to each member's share of that property payment or assessment

Part V

The United Provinces

GENERAL REQUIREMENT AS TO RESIDENCE

1—(1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency

(2) For the purposes of this Part of this Schedule a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling house therein ready for occupation in which he occasionally dwells

QUALIFICATIONS DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was assessed during the previous financial year to income tax, or
- (b) was in an area wholly or partly within the constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum

QUALIFICATIONS DEPENDENT ON PROPERTY

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than twenty-four rupees per annum

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable, or
- (b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum, or
- (c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum is payable, or
- (d) is an under proprietor in Oudh in the constituency in respect of which under proprietary rent of not less than five rupees per annum is payable, or
- (e) in the case of a constituency comprising any part of the Hill Patts of Kumaun, is resident in those Hill Patts and, in the constituency, either is

owner of a fee simple state in those Hill Patts, or is assessed to the payment of land revenue or cesses of any amount in those Hill Patts, or is a Khailar

EDUCATIONAL QUALIFICATION

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination or an examination which is prescribed as the equivalent thereof

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

6 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces

SPECIAL PROVISION AS TO SHILPKARS IN THE HILL PATTIS OF KUMAUN

7 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Patts of Kumaun if he is a Shilpkar resident in a village in those Hill Patts and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village

ADDITIONAL QUALIFICATIONS FOR WOMEN

8 Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces, or
- (b) if she is proved in the prescribed manner to be literate, or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph

9 In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty six rupees per annum, or
- (b) was, in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum, or
- (c) owns land in the constituency in respect of which land revenue amounting to not less than twenty five rupees per annum is payable or
- (d) owns land in the constituency free of land revenue, if the land revenue *nominally* assessed on the land for determining the amount of rates payable in respect thereof, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency amounts to not less than twenty five rupees per annum, or
- (e) is resident in the Hill Patts of Kumaun and, in the constituency, either owns a fee simple estate situate in those Hill Patts or is assessed to the payment of land revenue or cesses of any amount in those Hill Patts, or is a Khailkar, or
- (f) is, in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926, or an under proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such to rent of not less than twenty-five rupees per annum, or
- (g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum or a rent in kind equivalent to not less than fifty rupees per annum is payable, or
- (h) was assessed in the previous financial year to income tax, or

- (i) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

10—(1) No person shall by virtue of paragraph five or sub paragraph (a) or sub paragraph (b) or paragraph eight of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged officer, non commissioned officer or soldier be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or if it is so prescribed, on behalf of, that person should be so included

(2) On the preparation of the original electoral roll for any rural constituency or on any revision of the electoral roll for a rural constituency within three years from the commencement of Part III of this Act, no person shall by virtue of her husband possessing any of the other qualifications requisite for the purposes of the said paragraph eight be included in the electoral roll unless application is made in the prescribed manner by her, or if it is so prescribed, on her behalf, that she should be so included.

INTERPRETATION, &c

- 11—(1) In this Schedule, in relation to the United Provinces—
 "owner" does not include a mortgagee or a lessee and
 "own" shall be construed accordingly,
 "tenant" as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be, and does not include a sub tenant, and as respects any house or building means a person who occupied it on payment of rent, or in the case of a house not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment;
 "under proprietor" means an under-proprietor as defined in the Oudh Rent Act, 1886.

' *Khaikar* means a person recorded as such in the records of rights of land in the Hill Patta of Kumaun

' *building* means a building as defined in the United Provinces Municipalities Act 1916

' *rental value* means the value of a house or building based on the amount of annual rent

Municipal tax and house or building tax mean the taxes respectively known by those names imposed under the United Provinces Municipalities Act 1916 the United Provinces Town Areas Act 1914 and the Cantonments Act 1924

' *urban area* means a municipality or notified area as defined in subsection (9) of section two and subsection (2) of section three hundred and thirty seven of the United Provinces Municipalities Act, 1916 or a town area as defined in the United Provinces Town Areas Act, 1914 or a cantonment

' *rural area* means an area which is not an urban area

(2) Where property is held or payments are made jointly by or assessments are made jointly on the members of a joint family or joint tenancy the family or tenancy shall be adopted as the unit for deciding whether under this Part of this Schedule the requisite qualification exists and if it does exist the person qualified shall be in the case of a joint Hindu family the manager thereof or if there is no manager the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned

Part VI

The Punjab

GENERAL REQUIREMENTS AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency

For the purposes of this Part of this Schedule proof that a person owns a family dwelling house or a share in a family

dwelling house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency

QUALIFICATION DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if during the previous financial year either—

- (a) he was assessed to income tax, or was in the Province assessed in respect of any direct municipal or direct cantonment tax to an amount of not less than fifty rupees or
- (b) he was in the Province assessed to halsiyat or profession tax to an amount of not less than two rupees, or, in districts in which no such tax exists, to any other direct tax imposed under the Punjab District Boards Act to an amount of not less than two rupees

QUALIFICATION DEPENDENT ON PROPERTY ETC

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) is the owner of land in the Province assessed to land revenue of not less than five rupees per annum or
- (b) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than five rupees per annum, or
- (c) is an assignee of land revenue in the province amounting to not less than ten rupees per annum or
- (d) is a tenant of not less than six acres of irrigated land in the constituency, or of not less than twelve

- acres of unirrigated land in the constituency, or
- (e) has throughout the twelve months immediately preceding the prescribed date owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees, not being land assessed to land revenue, or
 - (f) has throughout the twelve months preceding the prescribed date occupied as tenant in the constituency immovable property of an annual rental value of not less than sixty rupees, not being land assessed to land revenue or
 - (g) is a raiidar, inamdar, sufedposh or lambardar in the constituency

Provided that the provisions of sub paragraph (d) of this paragraph shall be deemed to be complied with in the case of a person who is the tenant of both irrigated and unirrigated land in the constituency if the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres.

EDUCATIONAL QUALIFICATION

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier in His Majesty's regular military *forces*

ADDITIONAL QUALIFICATION FOR WOMEN

6 Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the

pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces, or if *she is shown in the prescribed manner to be* literate or if her husband possesses the qualification requisite for the purposes of this paragraph

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) during the previous financial year was assessed to income tax or was assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees, or
- (b) is a retired pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces or
- (c) has throughout the twelve months preceding the prescribed date owned immovable property in the province of the value of not less than four thousand rupees or of an annual rental value of not less than ninety six rupees not being land assessed to land revenue, or
- (d) has throughout the twelve months preceding the prescribed date occupied as a tenant immovable property in the constituency of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue, or
- (e) is the owner of land in the Province assessed to land revenue of not less than twenty five rupees per annum or
- (f) is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum, or
- (g) is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency for which an annual rent of not less than twenty five rupees is payable, or

- (h) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than twenty five rupees per annum

Provided that for the purposes of sub paragraph (g) of this paragraph, where the amount payable by any tenant or lessee is assessed from harvest to harvest, the annual rent payable by him shall be deemed to be the annual average of the amounts payable by him in the three years preceding that in which the prescribed date falls

SPECIAL QUALIFICATION FOR SCHEDULED CASTES

8 Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) is shown in the prescribed manner to be literate or
- (b) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of a value of not less than fifty rupees not being land assessed to land revenue or has throughout that period owned malba of a house in the Province of not less than that value or
- (c) has, throughout the twelve months preceding the prescribed date, occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty six rupees

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

9 No person shall, by virtue of paragraph four, paragraph six or sub paragraph (a) of paragraph eight of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included

INTERPRETATION ETC

- 10 (1) In this Schedule, in relation to the Punjab—
 annual rental value in relation to immovable means
 the amount for which the property together with its

appurtenances and furniture, if any is actually let, or may reasonably be expected to let, from year to year,
 "land revenue means land revenue as defined in sub-section (6) of section three of the Punjab Land Revenue Act 1887, and in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount of land revenue paid during the three agricultural years preceding that in which the prescribed date falls

"land records means attested records of rights or attested annual records of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under the Chapter,

"owner does not include a mortgagee

'tenant' in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property means a person who holds that property by lease and is, or but for a special contract, would be liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment,

"*zaildar*," "*inamdar*," "*sufedposh*" and "*lambardar*" mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account

(3) Any reference to immovable property, not being land assessed to land revenue includes a reference to any

building situated on land assessed to land revenue

(4) Where property is held or payments are made by, or assessments are made on, the members of a Hindu joint family and the respective shares of the members of the family are not specified in the land records or in any municipal or cantonment record or in a decree of a civil court, as the case may be the family shall be adopted as the unit for deciding whatever the requisite qualification exists and if it does not exist, the person qualified shall be the manager of the family

(5) Subject to the provisions of the last preceding sub paragraph, and reference in this Schedule to land assessed to land revenue to other immovable property, to a tenancy or lease of land assessed to land revenue, or to assigned land revenue shall, in relation to any persons who are co sharers in such land, property tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons.

(6) Provided that the share of any person under the age of twenty one years shall if his father is alive and a co sharer be deemed to be added to the shares of his father, and if his father is dead and his eldest surviving brother is a co sharer be deemed to be added to the share of that brother

(6) Not more than one person shall be qualified in respect of the occupation of a building occupied in common by two or more persons and any question which of those persons is to be qualified shall be terminated in the prescribed manner

Part VII

Bihar

GENERAL REQUIREMENT AS TO RESIDENCE

1—(1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in *the constituency*

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies or maintains therein a dwelling house ready for occupation which he occasionally occupies

QUALIFICATIONS DEPENDENT ON TAXATION

2—Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if he was assessed during the previous financial year to income tax or was, in the previous financial year assessed to an aggregate amount of not less than one rupee eight annas in respect of municipal tax or is assessed otherwise than in the Santal Parganas to *chaukidari* tax of an annual amount of not less than nine annas

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there was substituted for the reference to nine annas a reference to twelve annas

QUALIFICATIONS DEPENDENT ON PROPERTY

3—Subject as aforesaid a person shall also be qualified to be included in the electoral roll of any territorial constituency if he either—

- (a) occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay an annual rent of not less than twenty-four rupees or
- (b) holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or *chaukidari* tax is levied, for which he is liable to pay a rent of not less than six rupees per annum or a local cess of not less than three annas,

Provided that in relation to land within the Santal Parganas this paragraph shall have effect as if there were substituted for the reference to six rupees, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, a reference to five rupees, and thereafter a reference to three rupees eight annas

EDUCATIONAL QUALIFICATION

4—Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examinations or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination

QUALIFICATION BY REASON OF SERVICE IN HIS
MAJESTY'S FORCES

5—Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces

ADDITIONAL QUALIFICATION FOR WOMEN

6—Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph, or if she is shown in the prescribed manner to be literate

Provided that in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom

7—A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) in the previous financial year he was assessed to income tax, or
- (b) he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces, or

- (c) he was in the previous financial year assessed in the Province to an aggregate amount of not less than three rupees in respect of municipal tax, or
- (d) he is assessed in the Province otherwise than in the Santal Parganas to an annual sum of not less than two rupees eight annas in respect of chaukidari tax or
- (e) he occupies land or building situate in the notified area of Jamshedpur in respect of which he is liable to pay rent of not less than one hundred and forty four rupees per annum or
- (f) he holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, in respect of which he is liable to pay rent of not less than twenty four rupees per annum or a local cess of not less than twelve annas

SPECIAL PROVISIONS AS TO MUHAMMADAN WOMEN'S CONSTITUENCY

8—No man shall be included in the electoral roll for, or be entitled to vote at any election in any Muhammadan constituency specially formed for the election of a person to fill the seat reserved for women

INTERPRETATION ETC

9—(1) In this Schedule in relation to Bihar—

'municipal tax means a tax or rate levied in a municipality constituted under the Bihar and Orissa Municipal Act, 1922 in an area in respect of which a notification has issued under section three hundred and eighty eight of that Act, or in a cantonment, or in the area administered by the Patna Administration Committee,

'chaukidari tax means any tax levied under the Village Chaukidari Act 1870 the Chota Nagpur Rural Police Act 1914 or section thirty of the Bihar and Orissa Village Administration Act, 1922

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then, subject to the provisions of Part I of this Schedule one and one only of those persons shall be qualified and the person to be qualified shall be selected in the prescribed manner

Part VIII

The Central Provinces and Berar

GENERAL REQUIREMENTS AS TO RESIDENCE

1—(1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless, in the case of a rural constituency, he has a place of residence in the constituency, and, in the case of an urban constituency, he has a place of residence in, or within two miles from the boundary of the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to have a place of residence in an area if and only if he either—

- (a) has actually dwelt in a house within the area for not less than one hundred and eighty days in the aggregate during the previous financial year, or
- (b) he has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year as a dwelling for himself in charge of his dependants or servants, and has visited that house during that year.

QUALIFICATIONS DEPENDENT UPON TAXATION

2—Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if in the previous financial year he either—

- (a) was assessed to income tax, or
- (b) was in an urban area in the Province in which municipal tax based on *haisiyat* is imposed, assessed to such a tax on a *haisiyat* of not less than seventy five rupees

QUALIFICATIONS DEPENDENT ON PROPERTY, ETC.

3—Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of a territorial constituency if he either—

- (a) holds in the Central Provinces, as a proprietor or *thekadar* an estate or *mahal* the land revenue or *kamil jama* of which is not less than two rupees, or
- (b) holds, in the Central Provinces, as a proprietor or *thekadar* in proprietary right *sur* land of *khudkasht* or, as a *malik makbuza*, *raiya* or tenant, agricultural land being *sur* and, *khudkasht* or agricultural land, the assessed or assessable land revenue or the rent of which is not less than two rupees, or
- (c) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than two rupees, or
- (d) is, in an urban area in the Province, the owner or tenant of a building, the annual rental value of which is not less than six rupees or
- (e) is a *watandar patel* or a *watandar patwar* holding office, or a registered *deshmukh* or *deshpandit* or a *lambardar*

EDUCATIONAL QUALIFICATION

Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency

if he is proved, in the prescribed manner, to have passed an examination which qualifies for admission to a course of study for a degree of the Nagpur University, or an examination prescribed as at least equivalent thereto, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination

Provided that, in relation to a constituency in Berar, the foregoing provisions of this paragraph shall be deemed to be complied with in relation to any person if he is proved in the prescribed manner to have passed any examination in the State of Hyderabad prescribed as at least equivalent to an examination the passing of which qualifies persons under those provisions

QUALIFICATION BY REASON OF SERVICE IN HIS
MAJESTY'S FORCES AND THE FORCES OF
HIS EXALTED HIGHNESS
THE NIZAM OF HYDERABAD

5—(1) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer non commissioned officer or soldier of His Majesty's regular military forces

(2) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if he is a retired pensioned or discharged officer, non commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police

ADDITIONAL QUALIFICATIONS FOR WOMEN

6—(1) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or pensioned mother of a person who was an officer non commissioned officer or soldier of His Majesty's regular military forces,

(b) if she is proved in the prescribed manner to be literate or to be the holder of a primary school certificate or

(c) if her husband possesses the qualifications requisite for the purposes of this paragraph

(2) Subject, as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if she is the pensioned widow or pensioned mother of a person who was an officer, non commissioned officer or soldier of the regular forces of His *Exalted Highness the Nizam of Hyderabad*, or an officer or man of the Hyderabad State Police

7—(1) A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

[a] is a retired pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or

[b] holds in the Central Provinces, as a proprietor or thekadar an estate or mahal the land revenue or kamil jama of which is not less than thirty five rupees or

[c] holds, in the Central Provinces, as a proprietor right, sir land or khudkasht, or as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or rent of which is not less than thirty five rupees, or

[d] holds in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than thirty five rupees, or

[e] is in an urban area, the owner or tenant of a building of which the annual rental value is not less than thirty six rupees, or

[f] was, in an urban area in which a municipal tax based on haisiyat is imposed, assessed in the previous financial year to such a tax on a haisiyat

of not less than four hundred rupees

(2) In relation to any territorial constituency in Berar, a husband shall also be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police

ADDITIONAL QUALIFICATION FOR MEMBERS OF SCHEDULED CASTES

8—Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwar, a jagaha, or a village mahar holding office

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

9—No person shall, by virtue of paragraph four of this Part of this Schedule or by virtue of being a pensioned widow or mother, or of being literate or the holder of a *prima y* school certificate, or of being the wife of an officer, non-commissioned officer, soldier or man of any force, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included

INTERPRETATION &c

10—(1) In this Schedule, in relation to the Central Provinces and Berar—

"building" means any structure or enclosure, whether used as a human dwelling or otherwise, and includes a part of a building,

"estate", "mahal", "malik makbuza", "lamal jama", "sir land" and "khudkasht" have the meanings respectively assigned to them in section two of the Central Provinces Land Revenue Act, 1917.

"estate or mahal" includes a part of an estate or a mahal,

lambardar means a lambardar appointed under the provisions of the Central Provinces Land Revenue Act 1917,
land revenue means land revenue as defined in section fifty six of the Central Provinces Land Revenue Act 1917 and in section forty nine of the Berar Land Revenue Code 1918

Proprietor includes an inferior proprietor and a plot proprietor but does not include a transferee of proprietary rights in possession or a mortgagee with possession

rayat means the holder of a survey number as defined in sub section (18) of section two of the Central Provinces Land Revenue Act 1917 and includes the holder of land recorded in the land records maintained by the Provincial Government as in *ikiyat sarkar*

registered deshmukh or deshpandia means a person being a deshmukh or deshpandia whose name is recorded in the registers of political pensions maintained by the Deputy Commissioners in Berar as the holder of a pension or share of a pension,

rental value in relation to immovable property means the amount for which the property together with its appurtenances and furniture if any is actually let or may reasonably be expected to be let from year to year

tenant, in relation to agricultural land means a tenant as defined in sub section (11) of section two of the Central Provinces Tenancy Act 1920 but does not include a sub tenant and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment

thekadar includes a gaontia and a protected headman

hold in relation to land or an estate or mahal means to be recorded in the records maintained under Chapter V, of the Central Provinces Land Revenue Act 1917 or Chapter X of the Berar Land Revenue Code, 1928, or in the case of the Malghat Taluq of the Amraoti District in the land records prescribed by the Provincial

Government, as the person in possession of the land, estate or mahal,

"urban area" means a municipality, notified area or cantonment, and includes the Government gun carriage factory estate at Jubbulpore and any prescribed railway settlements,

"watandar patel" and "watandar patwar" mean respectively a patel and a patwar appointed under section five of the Berar Patels and Patwaris Law, 1900

(2) For the purposes of this Part of this Schedule ante alienation tenants as defined in section seventy two of the Berar Land Revenue Code, 1928, and section forty of the Berar Alienated Villages Tenancy Law, 1921, permanent tenants as defined in section forty seven of the Berar Alienated Villages Tenancy Law, 1921, and tenants of antiquity as defined in section seventy three of the Berar Land Revenue Code, 1928, shall be deemed to hold agricultural land in other than tenancy right

(3) Subject to the provisions of the next succeeding subparagraph, the provisions of this Part of this Schedule shall have effect in relation to any persons who are co sharers in, or in a tenancy or lease of, land or other immovable property as if the respective shares of those persons in the land, property, tenancy or lease were held separately

(4) Where property is held or payments are made jointly by the members of a joint family or a tax is assessed jointly on the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves

(5) Any reference in this Part of this Schedule to a retired, pensioned or discharged officer, or man of the Hyderabad State Police shall be deemed not to include a reference to any person who has been dismissed or discharged from the police for disciplinary reasons

Part IX

Assam

GENERAL REQUIREMENT AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of residence in the constituency and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it,

Provided that in relation to the European constituency the provisions of this paragraph shall be deemed to be complied with in relation to any person if he is actually employed anywhere in Assam but is absent from Assam on leave from his employment.

QUALIFICATIONS DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if, in the previous financial year, he either—

- (a) was assessed to income tax, or
- (b) was in the constituency assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than two rupees or, in the Sylhet municipality, of not less than one rupee eight annas, or to a tax of not less than one rupee in a Small Town, or, in the district of Sylhet, the district of Cachar, or the district of Goalpara, to a tax of not less than eight annas under the Village Chaukidari Act, 1870

QUALIFICATIONS DEPENDENT ON PROPERTY

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency, if in the constituency he either—

- (a) is the owner of land in the Province the land revenue on which has been assessed or is assessable at not less than seven rupees eight annas per annum, or

- (b) is liable to pay a local rate of not less than eight annas per annum, or
- (c) throughout the previous financial or previous Bengali year held from a landlord land in any of the following districts that is to say, Lakhimpur, Sibsagar Darrang, Nowgong or Kamrup or in the Garo Hills, and paid to the landlord rent to the value of not less than seven rupees eight annas in respect of that land

Provided that for the purposes of this paragraph land situate, and local rates levied in the districts of Sylhet, Cachar and Goalpara shall be left out of account

EDUCATIONAL QUALIFICATION

4 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the middle school leaving certificate examination or any other examination prescribed as at least equivalent thereto

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles

ADDITIONAL QUALIFICATION FOR WOMEN

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was an officer non commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles, or if she is proved in the prescribed manner to be literate or if her husband possesses the qualifications requisite for the purposes of this paragraph

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

- (a) is a retired pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or the Assam Rifles; or
- (b) was in the previous financial year assessed to income tax, or
- (c) was in the previous financial year assessed in the constituency in respect of municipal or cantonment rates or taxes—
 - (i) in the Nowgong municipality to not less than two rupees, or
 - (ii) in the Sylhet municipality to not less than one rupee eight annas, or
 - (iii) elsewhere in the Province, to not less than three rupees, or
- (d) was in the constituency assessed in the previous financial year to a tax of not less than one rupee in a Small Town, or
- (e) was in the constituency assessed in the previous financial year in the district of Sylhet, the district of Cachar or the district of Goalpara to a tax of not less than one rupee under the Village Chaudhari Act, 1870, or
- (f) elsewhere than in the said districts, is the owner of land in the constituency the land revenue on which has been assessed or is assessable at not less than fifteen rupees per annum, or
- (g) is liable to pay a local rate in the constituency of not less than one rupee per annum.

APPLICATION NECESSARY FOR ENROLMENT IN
CERTAIN CASES

8 No person shall, by virtue of paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by her, or, if it is so prescribed, on her behalf, that she should be so included.

Provided that, except in relation to the original preparation

of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications have effect only where the husband's qualification is that mentioned in sub paragraph [a] of paragraph seven of this Part of this Schedule

SPECIAL PROVISIONS AS TO SEAT RESERVED FOR WOMEN

9 The following provisions shall have effect in relation to any constituency specially formed for the election of persons to fill the seat reserved for women—

- (a) no man shall be included in the electoral roll for the constituency or be entitled to vote at any election therein
- (b) if and so long as the constituency comprises any part of Shillong any reference in this Part of this Schedule to the constituency shall be construed as including a reference to so much of the areas under the jurisdiction of the Shillong Municipal Board and the Shillong Cantonment authority as is no part of British India, and any reference to municipal or cantonment rates to taxes shall be construed as including a reference to any such rates or taxes assessed by or paid to that board or that authority in the exercise of any jurisdiction exercised by them in relation to areas outside British India

SPECIAL PROVISIONS AS TO BACKWARD AREAS AND BACKWARD TRIBES

10 No person who is entitled to vote in the election of a person to fill any of the seats to be filled by representatives of backward areas or backward tribes or is entitled to be included in the electoral roll for any constituency formed for the purpose of filling any such seat, shall be included in the electoral roll for any territorial constituency in the province, other than any constituency specially formed for the election of persons to fill the seat reserved for women

11 (1) In this Schedule, in relation to Assam—

"Small Town" means a notified area constituted under Chapter XII of the Assam Municipal Act I of 1923.

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra,

"Local rate" means the local rate assessed under the Assam Local Rates Regulation, 1879,

"landlord" means a person under whom another person holds land immediately, but does not include the Government,

"rent" includes rent in kind or partly in kind

(2) Where property is held or payments are made jointly by, or assessments are made jointly on the members of a joint family, the family shall be adopted as the unit for deciding whether the necessary qualification exists, and if it does exist the person qualified shall be in the case of a Hindu joint family the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

Provided that any other member of any such family shall also be qualified if the proportion of the joint property payment or assessment which corresponds with his share therein would be sufficient for him to be qualified if he held it separately.

Part X

The North West Frontier Province

GENERAL REQUIREMENT AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency

For the purposes of this Part of this Schedule proof that a person or in the case of a woman, her husband owns a family dwelling house or a share in a family dwelling house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole

or in part shall be sufficient evidence that that person is resident in the constituency.

QUALIFICATION DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if during the previous financial year, he was either,

- [a] assessed to income tax or
- [b] assessed in the Province in respect of any municipal or corporation tax to an amount of not less than fifty rupees or
- [c] in the case of rural constituency, assessed to district board tax of not less than two rupees

QUALIFICATIONS DEPENDENT ON RIGHTS IN PROPERTY &c

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if in the Province he either—

- [a] owned throughout the twelve months preceding the prescribed date immovable property of the value of not less than six hundred rupees, not being land assessed to land revenue, or
- [b] has for the twelve months preceding the prescribed date occupied as a tenant immovable property of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue, or
- [c] is the owner of not less than six acres irrigated land or not less than twelve acres unirrigated land or of land assessed to land revenue of not less than five rupees per annum; or
- [d] is the assignee of land revenue amounting to not less than ten rupees per annum; or
- [e] has been for the whole of the preceding fiscal year the tenant of not less than six acres of irrigated

land or not less than twelve acres unirrigated land, or

[f] is a zaildar, mamdar or lambardar :

Provided that for the purposes of sub paragraph [c] and sub paragraph [e] of this paragraph a person shall be deemed to own or, as the case may be, to have been the tenant of at least six acres of irrigated land if he owns, or, as the case may be, was the tenant of, irrigated and unirrigated land and the sum of the area of that irrigated land and half the area of that unirrigated land is not less than six acres

EDUCATIONAL QUALIFICATION

4. Subject as aforesaid, a person shall be qualified to be included—

[a] in the electoral roll for any urban constituency, if he is proved in the prescribed manner to have passed a middle school examination or any other examination prescribed as at least equivalent to that examination,

[b] in the electoral roll for a rural constituency, if he is proved in the prescribed manner to have passed the primary (fourth class) examination or any other examination prescribed as at least equivalent to that examination

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non-pensioned officer or soldier of His Majesty's regular military forces

ADDITIONAL QUALIFICATIONS FOR WOMEN

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother, of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces,

or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words 'or if she is shown in the prescribed manner to be literate' were omitted therefrom

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if either—

- (a) he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces or
- (b) he has an income of at least forty rupees per month or
- (c) he was during the previous financial year assessed to income tax or
- (d) in relation to an urban constituency, he was, during the previous financial year, assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees, or
- (e) in relation to a rural constituency, he was during the preceding financial year assessed in the Province in respect of any cess, rate or tax to an amount of not less than four rupees per annum payable to the district board, or
- (f) he owned throughout the twelve months preceding the prescribed date immovable property in the Province of the value of not less than six hundred rupees, not being land assessed to land revenue, or
- (g) he occupied as a tenant throughout the twelve months preceding the prescribed date immovable property in the Province of an annual rental value of not less than forty-eight rupees, not being land assessed to land revenue, or
- (h) he is the owner of land in the Province assessed

to land revenue of not less than ten rupees per annum or

- (i) he is an assignee of land revenue in the Province amounting to not less than twenty rupees per annum or
- (j) he is a tenant or lessee under the terms of a written lease for a period of not less than three years of land in the Province assessed to land revenue of not less than ten rupees per annum or
- (k) he is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act 1857 in respect of land in the Province assessed to land revenue of not less than ten rupees per annum

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN CASES

8 No person shall by virtue of paragraph four or paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included

INTERPRETATION &c

9 (1) In this Schedule in relation to the North West Frontier Province—

annual rental value in relation to immovable property, means the amount for which the property together with its appurtenances and furniture if any is actually let or may reasonably be expected to be let from year to year

fiscal year means a year ending on the thirtieth day of September

land revenue means revenue as defined in subsection (6) of section three of the Punjab Land Revenue Act 1857 and in the case of fluctuating land revenue or land revenue assessed on land subject to river action the annual amount thereof shall be taken to be the average amount paid during the three years preceding the prescribed date.

"zaildar", "inamdar" and "lambardar" mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and do not include a substitute appointed temporarily for any such person.

"tenant" in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887, and in relation to other property means a person who holds that property by lease and is or but for a special contract, would be liable to pay rent therefor, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owed any immovable property, and period during which it was owned by a person from whom he derived title by inheritance shall be taken into account

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue

(4) Where property is held or payments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

(5) Subject to the provisions of the last preceding sub paragraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue, shall in relation to any persons who are co sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons

Provided that the share of any person under the age of twenty one years shall, if his father is alive and a co sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co sharer, be deemed to be added to the share of that brother

Part XI

Orrisa

GENERAL REQUIREMENTS AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency, and a person shall be deemed to be resident within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies or maintains therein a dwelling house ready for, occupation which he occasionally occupies

QUALIFICATIONS APPLICABLE TO ALL TERRITORIAL CONSTITUENCIES

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he was assessed to income tax or was assessed to an aggregate amount of no less than one rupee, eight annas, in respect of municipal taxes

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed any other prescribed examination not lower than a final middle school examination

4 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces.

5 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer, or soldier of His Majesty's regular military forces, or
- (b) if her husband either is a retired or discharged officer, non-commissioned officer or soldier of His Majesty's regular military forces, or in the previous financial year was assessed to income tax or to an aggregate sum of not less than three rupees in respect of municipal taxes, or
- (c) if she is shown in the prescribed manner to be literate

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if sub paragraph (c) were omitted therefrom

SPECIAL PROVISIONS AS TO THE DISTRICTS OF CUTTACK,
PURI, BALASORE AND THE SUB DIVISION
OF ANGUL

6 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Cuttack, Puri, and Balasore and the sub division of Angul if he either—

- (a) is assessed to *chaukidari* tax of an annual amount of not less than nine annas, or
- (b) holds land in the Province, not situated in a municipality or an area in which *chaukidari* tax is levied, for which he is liable to pay rent or land revenue of not less than two rupees per annum or a local cess of not less than one anna,

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have

effect as if there were substituted for the reference to nine annas a reference to twelve annas

7 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any such constituency as is mentioned in the last preceding paragraph if she is the wife of any person who either—

- (a) is assessed to chaukidari tax of an annual amount of not less than two rupees, eight annas or
- (b) holds land in the Province, not situated in a municipality or in an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or local cess of not less than eight annas,

SPECIAL PROVISIONS AS TO THE DISTRICTS OF GANJAM AND VIZAGAPATAM AND THE KHONDIMALS SUB DIVISION

8 Subject as aforesaid, a person, not being a member of a backward tribe shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Ganjam and Vizagapatam or in the Khondimals sub division—

- (a) if in either of those districts or in that sub division he holds land not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than two rupees per annum, or
- (b) without prejudice to the generality of the foregoing provisions, if, being a woman, she is the wife of a person who in either of those districts or in that sub division holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than sixteen rupees per annum

SPECIAL PROVISION AS TO THE DISTRICT OF SAMBALPUR

9 Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either—

- (a) holds land, not situated in a municipality or a sanitation area for which he is liable to pay rent or land revenue of not less than one rupee per annum or village cess of not less than one anna
- (b) is in occupation of a house for which he is liable to pay rent of not less than six rupees per annum not being a house in a municipality or sanitation area or
- (c) is assessed to an annual tax of at least twelve annas under the Central Provinces Sanitation Act, 1902 or the Central Provinces Village Sanitation and Public Management Act 1920 or
- (d) is a village servant holding office as a jhankar ganda kotwar jagalia or mahar and holds land recorded in the record of rights as service land

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act this paragraph shall have effect as if for the references in sub paragraph (a) thereof to one rupee and one anna there were substituted respectively references to two rupees and two annas

10 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the district of Sambalpur if she is the wife of a person who in that district either—

- (a) holds land not situated in a municipality or a sanitation area for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or village cess of not less than eight annas or
- (b) is in occupation of a house for which he is liable to pay an annual rent of not less than thirty rupees not being a house in a municipality or sanitation area or
- (c) is assessed to an annual tax of not less than ten rupees under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920.

11—(1) In this Schedule in relation to Orissa—

"backward tribe" has the same meaning as in the Fifth Schedule to this Act.

"municipality" means an area constituted a municipality under the Bihar and Orissa Municipal Act, 1920, or Madras District Municipalities Act, 1920, or an area in respect of which a notification has been issued under section three hundred and eighty eight of the Bihar and Orissa Municipal Act, 1922

"municipal tax" means tax or rate levied in a municipality

"sanitation area" means an area administered under the Central Provinces Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920

"chankidari tax" means a tax levied under section thirty of the Bihar and Orissa Village Administration Act, 1922, or under section forty seven of the Angul Laws Regulation 1913

(2) Where property is held or payments are made jointly by, or assessments made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf, by the family themselves

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than the members of a joint family all such persons shall be regarded as a single person for deciding whether the requisite qualification exists and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule one and one only of those persons shall be qualified, and the persons to be qualified shall be selected in the prescribed manner.

Part XII

Sind

GENERAL REQUIREMENT AS TO RESIDENCE

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

- (a) in relation to an urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof,
- (b) in the case of a rural constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or in a contiguous constituency of the same communal description

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to any European territorial constituency if he has, for a period of not less than one hundred and eighty days in the previous financial year, resided in a house in the Province

A person is deemed to reside in a house if he sometimes uses it as a sleeping place and a person is not deemed to cease to reside in a house merely because he is absent from it, or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning

QUALIFICATION DEPENDENT ON TAXATION

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax

QUALIFICATION DEPENDENT ON PROPERTY

3 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls an assessment of not less than eight rupees land revenue has been paid, or would have been paid if the land had not been alienated, or
- (b) cultivates as a Hari alienated or unalienated land in the constituency on which in the revenue year preceding that in which the prescribed date falls an assessment of not less than sixteen rupees land revenue has been leviable, or would have been leviable, if the land had not been alienated or
- (c) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency, or
- (d) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in any municipal borough, municipal district, cantonment or notified area and having at least the appropriate value

Where land is cultivated by more than one Hari, only one Hari for every sixteen rupees of land revenue shall be treated as qualified under sub paragraph (b) of this paragraph in respect of that land, and any question which of several Haris shall be treated as qualified under this paragraph in respect of any land shall be determined in the prescribed manner

In sub paragraph (d) of this paragraph, the expression "the appropriate value" means—

- (i) in relation to a house or building situate within the

city of Karachi, an annual rental value of thirty rupees,

- (ii) in relation to a house or building situate outside the city of Karachi but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees,
- (iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees

EDUCATIONAL QUALIFICATION

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the university of Bombay or an examination prescribed as at least equivalent to either of those examinations or, if it is so prescribed, any other prescribed examination, not being lower than a vernacular final examination

QUALIFICATION BY REASON OF SERVICE IN HIS MAJESTY'S FORCES

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged officer, non commissioned officer or soldier of His Majesty's regular military forces

ADDITIONAL QUALIFICATION FOR WOMEN

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non commissioned officer or soldier of His Majesty's regular military forces, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualification requisite for the purposes of this paragraph.

7. A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband

shall be deemed to possess the said qualifications if he—

- (a) was in the previous financial year assessed to income tax, or
- (b) is a retired, pensioned or discharged officer of His Majesty's regular military forces, or
- (c) holds in his own right or occupies as a permanent tenant or as a lessee from the Government alienated or unalienated land in the constituency on which, in any one of the five revenue years preceding that in which the prescribed date falls, an assessment of land revenue amounting, in the Upper Sind Frontier district, to not less than sixteen rupees and, elsewhere, to not less than thirty two rupees, has been paid, or would have been paid if the land had not been alienated, or
- (d) is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency, amounting, in the Upper Sind Frontier district, to not less than sixteen rupees, and, elsewhere, to not less than thirty two rupees, or
- (e) occupies as owner or tenant in the constituency a house or building situate in the city of Karachi or in a municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value

In sub paragraph (e) of this paragraph the expression "appropriate value" means—

- (i) in relation to a house or building within the city of Karachi, an annual rental value of sixty rupees,
- (ii) in relation to a house or building situate in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty six rupees, and
- (iii) in relation to any other house or buildings a capital value of one thousand five hundred rupees,

APPLICATION NECESSARY FOR ENROLMENT IN CERTAIN
CASES

8. No person shall by virtue of paragraph four or paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him, or if it is so prescribed, on his behalf that he should be so included

PROVISIONS AS TO JOINT PROPERTY, &c.

9 (1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co-sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons.

(2) Where two or more persons occupy any house, the rental value of the house shall, in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons,

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments would qualify a person if they had been owned, held or occupied, or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves.

Save as aforesaid any property owned, held or occupied or payments made jointly by, or assessments made jointly on, the members of a joint family, shall be left out of account for the purposes of this Part of this Schedule.

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax or the provisions of this Part of this Schedule relating to Hairs.

GOVERNMENT OF INDIA
INTERPRETATION &c

10 (1) In this Schedule, in relation to Sund—

'tenant means a lessee whether holding under an Instrument or under an oral agreement and includes a mortgagee of a tenant's rights with possession and in relation to a house not situate in military or police lines also includes any person occupying the house rent free by virtue of any office service or employment, holder means a person lawfully in possession of land whether his possession is actual or not and 'hold shall be construed accordingly

(2) The value of any machinery furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village or if there is no such land in the same village the average rate of assessment on assessed land in the nearest village containing assessed land

Appendix VIII

Women in Indian Politics

The Indian womanhood has never seriously come to be counted as a factor in national politics. The sphere of woman in India had been the home and she was never encouraged by the more selfish menfolk to talk and discuss politics. One fact responsible for this is the complete illiteracy and ignorance of women in India. But more than this the traditions of the country are responsible for receding her into the background.

Except for a mention the obstacles which social customs set up in the way of female education, there was hardly any reference to the women of India in the M C Report. Today, however, such a striking change has come about that no document discussing India's constitutional system could omit the women of India.

The history of women's movement in India may be divided into two periods pre war period, in which the pioneers, either individuals or in isolated societies, worked for social and educational reforms, and the post war period, when the movement became political, feminist, and all India.

The total female population of the nine major provinces of India at the Census of 1931 was 123 millions, of whom 63 millions were adults over 20 years of age, but of these latter only about 1½ million were literate in the sense of being able to read and write a letter in any one language and only about 15,000 were literate in English.

As the idea of Home Rule began to be envisaged more clearly through the final years of the Great War, Indian women with political ambition began to bestir themselves. They

approached the Secretary of State on his visit to India in 1917 asking for their enfranchisement under the new Constitution. But as yet there was no feminist movement no all India women's organisation though however women had always taken a part in the affairs of the Indian National Congress.

Women of India were deeply stirred by the Great War and had acquired the habit of working together on non communal lines to alleviate the sufferings of the troops. After the war they began to grope towards an all India programme.

It was a disappointment to the Indian womanhood to find that their demands found no place in the M.C. Reforms. The only thing that was done was to give the Provincial Legislatures power to enfranchise women if necessary. Madras led the way in 1921 and other provinces followed. Thus within 10 years the women of British India were throughout enfranchised.

The years 1921-23 were full of firsts for the first time records for women. In 1923 women for the first time voted both for the provincial legislatures and for the Central Legislative Assembly. In 1926 they became for the first time eligible as members of the legislatures and the year 1927 saw Dr. Muthu Lakshmi Reddi as the first woman legislator who was also chosen as the deputy president of the Madras Council. Dr. Reddi however, was a nominated member and so far no woman had been elected to any provincial Council or Assembly.

It is a fact that women in India have not had to fight a stiff battle against entrenched masculine privilege. They have just blown their trumpet once, twice and thrice and the walls of Jericho have fallen.

The franchise committee of the Round Table Conference (at which two women viz. Begum Shah Nawaz of the Punjab and Mrs. Subbarayan of Madras were delegates) declared in January 1931 that no system of franchise could be considered satisfactory where such a great disparity existed between the sexes and felt that special qualifications should be prescribed for them. The Loeban Committee held that about 1/5 of the voters should be women to enable them to influence the condi-

in addition to the women who already vote in virtue of holding an independent property qualification the wives and widows of men on the special electoral roll for the Assembly and also all literate women should be enfranchised

The Franchise Committee accordingly enfranchised 6½ million women making the proportion of 10½ per cent of the adult female population in the nine major provinces or 21 times the existing electorate In the U P for instance there would be 414 000 qualified on account of property 128 000 by literacy and 11 00 000 by reason of their husband's property, in all 14 million being one woman to four men

So much for the women's electorate We come to the still more difficult question of securing their presence in the legislatures The Simon Report and the Franchise Committee proposed the reservation of a small number of seats for women in the provincial legislatures for the first 10 years And accordingly in August 1932 the Communal award allocated to women 37 seats in Provincial Legislatures

Three all India women's organisations have grown since the war The women's Indian Association (Madras 1917) has one of its aims to secure the adequate representation of women on public bodies The National Council of Women in India (1925) has mainly devoted its attention to social reform and to keeping women in touch with the women of other countries The All India Women's Conference on Educational and Social Reforms (1926) provides an important platform wherefrom women can voice their views This meets once every year in different parts of the country and has recently passed a number of important resolutions in the interests of women

Within the Congress women have now a special organisation of their own the *Desh Sevikas* vowed to only peaceful methods of persuasion Many of them have gone to prison and have suffered much for the cause of their country's freedom